2011

Pioneer Builders Company of Nevada v. KDA Corporation : Brief of Appellee

Utah Supreme Court

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IN THE SUPREME COURT OF UTAH

PIONEER BUILDERS COMPANY OF NEVADA, INC., a Nevada corporation a/k/a PIONEER BUILDERS OF NEVADA, a Nevada corporation a/k/a PIONEER BUILDERS, a Nevada corporation, Plaintiff / Appellant, v. K D A CORPORATION, a Utah corporation a/k/a KDA CORPORATION a/k/a K.D.A. Corporation a/k/a K.D.A. CORPORATION, INC.; *et al.*, Defendants / Appellees.	**ANDERSEN DEFENDANTS' BRIEF OF APPELLEE** Supreme Court No. 20110050-SC District Court No. 030100421LM

ANDERSEN DEFENDANTS' BRIEF OF APPELLEE

APPEAL OF THE FINAL DECISION(S) OR DECREE(S)
ENTERED BY THE FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY,
STATE OF UTAH, THE HONORABLE JUDGE BEN H. HADFIELD PRESIDING

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PARTIES TO THE PROCEEDING BELOW

Pursuant to Rules 24(a)(1) of the Utah Rules of Appellate Procedure, the following is a complete list of all parties to the District Court proceedings that are the subject of this appeal, and their respective party designations in those proceedings:

1. PIONEER BUILDERS COMPANY OF NEVADA, INC., a Nevada corporation a/k/a PIONEER BUILDERS OF NEVADA, a Nevada corporation a/k/a PIONEER BUILDERS, a Nevada corporation; Plaintiff

2. K D A CORPORATION, a Utah corporation a/k/a KDA CORPORATION A/K/A K.D.A. CORPORATION a/k/a THE K.D.A. CORPORATION a/k/a K.D.A. CORPORATION PROPERTIES, INC., a Utah corporation; Defendant

3. PINE RIDGE PROPERTIES, INC., a Utah corporation; Defendant

4. UNITED WEST INVESTMENTS GROUP, INC., a Utah corporation, a/k/a UNITED WAY INVESTMENTS GROUP; Defendant

5. S. DENISE HARDY; Defendant

6. JOSEPH L. HARDY; Defendant

7. SUMMIT ESCROW SERVICES, L.C., a Utah limited liability company, a/k/a SUMMIT EXCHANGE SERVICES, LLC, A Utah limited liability company; Defendant

8. DALE RIDD; Defendant

9. MARTHA RIDD; Defendant

10. MARCEL J. SCHWAGER; Defendant

11. SANDRA S. SCHWAGER; Defendant

12. LYNN C. ANDERSEN, a/k/a LYNN L. ANDERSEN, a/k/a LYNN ANDERSEN, a/k/a LYNN C. ANDERSON, a/k/a LYNN L. ANDERSON, a/k/a LYNN ANDERSON; Defendant

13. ROBERT GONZALES; Defendant

14. SHERI GONZALES; Defendant

15. MICHAEL BUDD; Defendant

16. TRUDI BUDD; Defendant

17. HAROLD J. KAY; Defendant

18. WILLIAM R. GLASER, a/k/a BILL GLASER; Defendant

19. LAURIE A. GLASER; Defendant

20. DONNA L. ELMQUIST, a/k/a DONNA L. ELMQUIST-SHILLCUTT; Defendant

21. BRENT RHEES; Defendant

22. GINGER RHEES; Defendant

23. SHYREAL D. JENSEN; Defendant

24. INGE L. JENSEN; Defendant

25. JOHN D. SMIDT, trustee of the John D. Smidt and Linda L. Smidt Revocable Trust U/I/D October 7, 1999; Defendant

26. LINDA L. SMIDT, trustee of the John D. Smidt and Linda L. Smidt Revocable Trust U/I/D October 7, 1999; Defendant

27. THE JOHN D. SMIDT AND LINDA L. SMIDT REVOCABLE TRUST U/I/D OCTOBER 7, 1999; Defendant

28. RANDALL HUNTER (deceased); Defendant

29. RONALD HUNTER; Defendant

30. KAY HUNTER; Defendant

31. DANIEL HUNTER; Defendant

32. MARK B. HANCEY; Defendant

33. HANCEY & ASSOCIATES, P.C., a Utah professional corporation; Defendant

34. ROD W. CUSHING d/b/a ALLIANCE FINANCIAL, LLC, a Utah limited liability company; Defendant

35. MILES D. CRABTEE; Defendant

36. SHERRY CRABTEE; Defendant

37. CLINT THOMPSON; Defendant

38. CAROLYN THOMPSON; Defendant

39. LARRY H. ANDERSEN, a/k/a LARRY A. ANDERSEN, a/k/a LARRY ANDERSEN; LARRY H. ANDERSON, LARRY A. ANDERSON, a/k/a LARRY ANDERSON; Defendant

40. BILL BREINHOLT; Defendant

41. SHAWN BREINHOLT; Defendant

42. TERRY BEHUNIN; Defendant

43. TIMOTHY J. KENDELL; Defendant

44. SCOTT HAYES; Defendant

45. LENARD HANZLICK; Defendant

46. KATHRYN J. HANZLICK; Defendant

47. BARRETT STEADMAN (deceased); Defendant

48. DOROTHY STEADMAN; Defendant

49. DOUG PUGMIRE; Defendant

50. NORINE PUGMIRE; Defendant

51. GREGORY LARSEN; Defendant

52. JERILYN LARSEN; Defendant

53. GLADE LARSEN, a/k/a GLADE L. LARSEN; Defendant

54. CORALIE LARSEN; Defendant

55. RICHARD ROBERTS, a/k/a RICHARD D. ROBERTS; Defendant

56. CAROL ROBERTS; Defendant

57. BOYD SMITH, a/ka/ BOYD A. SMITH, as Trustee of The Boyd A. Smith and Carolyn G. Smith Family Trust; Defendant

58. CAROLYN G. SMITH, as Trustee of The Boyd A. Smith and Carolyn G. Smith Family Trust; Defendant

59. THE BOYD A. and CAROLYN G. SMITH FAMILY TRUST; Defendant

60. LARRY CALL; Defendant

61. KAREN CALL; Defendant

62. HARLAN TAYLOR; Defendant

63. RANAE TAYLOR; Defendant

64. JOHN F. GUNN; Defendant

65. BECKY CUTLER-GUNN; Defendant

66. FIRST MAGNITUDE SERVICES, LLC, a Utah limited liability company; Defendant

67. FIRST MAGNITUDE FUND, LLC, a Utah limited liability company; Defendant

68. JOHN L. WILLIAMSON; Defendant

69. DAVE WARNICK; Defendant

70. DEWEY GARNER; Defendant

71. JASON THOMPSON; Defendant

72. GLADE W. DAVIS; Defendant

73. OWEN BROWER; Defendant

74. STEVE G. BAUGH; Defendant

75. THOR ROUNDY; Defendant

76. THOR ROUNDY, P.C., a Utah professional corporation; Defendant

77. ADVANCE TITLE INSURANCE AGENCY, L.C., a Utah limited liability company; Defendant

78. RALPH CALL; Defendant

79. RE/MAX IN THE VALLEY, INC., a Utah corporation, a/k/a RE/MAX IN THE VALLEY; Defendant

80. RE/MAX GREAT WEST BROKERS, PC, a Utah professional corporation; Defendant

81. RE/MAX WEST, P.C., a Utah professional corporation, a/k/a RE/MAX WEST; Defendant

82. SIRIUS EQUITY, LLC, a Utah limited liability company; Defendant

83. PATSY MCMICHAEL; Defendant

84. ROBERT MCMICHAEL; Defendant

85. SUNRISE VILLAGE MEMBERS' ASSOCIATION, INC., a Utah corporation; Defendant

86. NICTREE LIMITED PARTNERSHIP, a Utah limited partnership; Defendant

87. JOHN DOES I-XXX; and JANE DOES I-XXX; Defendants

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STATEMENT OF JURISDICTION

Jurisdiction in this matter is conferred upon the Supreme Court of Utah pursuant to UTAH CODE ANN. § 78A-3-102 (2011).

STATEMENT OF ISSUES ON APPELLANTS' APPEAL

Appellant, Pioneer Builders Company of Nevada, Inc. ("Pioneer" or "Appellant"), specified five issues for appeal in its Statement of Issues. Appellees, Lynn C. Andersen, Larry Andersen, Bill Breinholt, Shauna Breinholt, Donna L. Elmquist, William R. Glaser, Laurie A. Glaser, Leonard Hanzlick, Kathryn Hanzlick, Scott Hayes, Ronald Hunter[1], Kay Hunter, Estate of Randall Hunter, Harold J. Kay, Timothy J. Kendell, Glade Larsen, Coralie Larsen, Gregory Larsen, Nictree Limited Partnership, Dale Ridd, Marta Ridd, Richard Roberts, Carol Roberts, Marcel J. Schwager, Sandra S. Schwager, John D. Smidt as Trustee[2], Linda L. Smidt as Trustee, Dorothy Steadman, Sunrise Village Members' Association, Inc., Clint Thompson, and Carolyn Thompson (collectively "Andersen Defendants"[3]), object to

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1 Pioneer acknowledged it is not appealing the Trial Court's order that Ronald Hunter, Kay Hunter, and the Estate of Randall Hunter have priority in Lot 18, Parcel -025, over Pioneer's interests in said lot and parcel. (*See* Appellant's Addendum at Tab 8, f.n. 1).

2 Pioneer acknowledged it is not appealing the Trial Court's order that John D. Smidt, as Trustee, and Linda L. Smidt, as Trustee, have priority in Lot 16, Parcel -025, over Pioneer's interests in said lot and parcel. (*See* Appellant's Addendum at Tab 8, f.n. 2).

3 At the Trial Court level, the "Andersen Defendants" also included Brent Rhees. However, the First District Court's Updated Order and Judgment of Priority and Foreclosure of Location Lots, entered December 16, 2009, held "Pioneer is entitled to foreclose ... against [Brent Rhees' Lot 51] ... and that such foreclosure and sale shall terminate and extinguish all rights, titles, and interests of ... Brent Rhees" (R. at 5433.) This determination is not being

Issue Nos. 4 and 5 insofar as they are inapplicable to the Andersen Defendants. Additionally, Pioneer raised issues that were not included in its Statement of Issues, including the title insurance and attorneys' fees issues. The Andersen Defendants object to these issues in that Pioneer did not include standards of review, supporting authority for the standards of review, and citations to the record showing these issues were preserved for appeal.

DETERMINATIVE PROVISIONS OF LAW

The following statute, set out verbatim with appropriate citation, is of central importance to the appeal:

UTAH CODE ANN. § 57-3-103 (2005):

> Each document not recorded as provided in this title is void as against any subsequent purchaser of the same real property, or any portion of it, if:
>
> (1) the subsequent purchaser purchased the property in good faith and for a valuable consideration; and
>
> (2) the subsequent purchaser's document is first duly recorded.

STATEMENT OF THE CASE RELEVANT TO ANDERSEN DEFENDANTS

A. Nature of the Case

This appeal arises from multiple summary judgment rulings entered by the First District Court, Cache County, State of Utah, the Honorable Judge Ben H. Hadfield presiding ("Trial Court"). This action, as it relates to the Andersen Defendants, concerns an attempt by a lender, Pioneer, to take priority over and to foreclose against the Andersen Defendants' real

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appealed by Brent Rhees and/or the Andersen Defendants and therefore he has been removed as an Andersen Defendant for purposes of this Brief of Appellee, as he has no interest to protect through defending this appeal. The remaining Andersen Defendants were adjudicated at the Trial Court level to have priority over Pioneer's interests in the Property. This Brief of Appellee is limited to their protection.

property interests in and to various individual pads, lots, units, easements, rights of way, and other parts and interests in 40 acres of recreational property located near Bear Lake, in Rich County, Utah ("Property").

The Andersen Defendants all purchased their leasehold interests and rights of way in the Property prior to any Pioneer loans being made or Pioneer trust deeds being recorded. These leasehold interests (each individually described by a metes and bounds property description in their respective lease and right of way documents) gave rights in the Property to the purchasers for 100 years (broken into two 50-year leases and two 50-year grants of rights of way running consecutively). (*See* Andersen Defendants' Reply in Opposition to Plaintiff's Motion for Summary Judgment for Foreclosure and in Support of Defendants' Motion for Summary Judgment ("Andersen Defendants' Summary Judgment Reply Memorandum") at Exhibits 2-17, R. at 3259-3441.) A Lease, Right of Way Grant Deed, second 50-year Lease, and second 50-year Right of Way Grant Deed, representative of each Andersen Defendants' separate leasehold interest, are attached hereto as Addendum, Tab 1.

The various Andersen Defendants claim priority interests in nineteen different sites on the Property (hereinafter "Lots"). Each Lot is located either on Rich County Tax ID parcel number 41-08-00-025 ("Parcel -025") or Rich County Tax ID parcel number 41-08-00-036 ("Parcel -036"), or partially on both.

Pioneer's attempted foreclosure against the Lots is based on a defaulted loan made by Pioneer on or about November 13, 2000. As security for this loan, Pioneer received a trust deed that was recorded on November 17, 2000 ("First Pioneer Trust Deed"). The First

Pioneer Trust Deed included Parcel -036 as security, but did not include Parcel -025. Of the Andersen Defendants' Lots, at least seventeen of the nineteen Lots are wholly or partially located on Parcel -025. (*See* Affidavit of Layne J. Smith, Exhibits "A"–"C", R. at 4784-4797 (Exhibits in Packet No. 4798), and attached hereto as Addendum, Tab 2.)

Almost one year later, Pioneer obtained a Modification of Trust Deed and Trust Deed (collectively "Amended Pioneer Trust Deeds"), which are the first matters of record purporting to include Parcel -025 as security. (R. at 3020-3038, Appellant's Addendum at Tabs 6-7.) The Amended Pioneer Trust Deeds were recorded on August 14, 2001. (*Id.*) However, at the date of recording, the Trustor, Pine Ridge Properties, Inc. ("Pine Ridge"), did not have record title to Parcel -025. (*See* Warranty Deed from KDA to Pine Ridge transferring title to Parcel -036 and others, but not transferring title to Parcel -025 to Pine Ridge, R. at 4178-4179, Appellant's Addendum at Tab 11.) Subsequent deeds and affidavits were recorded in an attempt to correct alleged errors and omissions contained in the Amended Pioneer Trust Deeds[4] (all trust deeds recorded by Pioneer against the Property shall collectively be referred to as "Pioneer's Trust Deeds"). KDA finally transferred Parcel -025 to Pine Ridge on or about March 9, 2005. (*See* Quit Claim Deed, R. at 4174-4176, Appellant's Addendum at Tab 13.) Pioneer is now foreclosing on Pioneer's Trust Deeds and

---

4 Although the date Pioneer encumbered Parcel -025 is disputed, at the earliest it was August 14, 2001. (*See* Appellant's Addendum at Tab 8, f.n. 1 ("Pioneer's trust deed liens upon Parcel -025 were not recorded until [the Amended Pioneer Trust Deeds] were recorded on August 14, 2001")). Because the Andersen Defendants' interests in Parcel -025 were acquired prior to August 14, 2001, the Trial Court's determination Pioneer was on constructive notice prior to and through that date, the effective date of Pioneer's encumbrance of Parcel -025 is irrelevant to the Andersen Defendants except as explained in

seeking to eliminate the Andersen Defendants' leasehold, right of way, and other interests in the Property.

In addition to indisputably acquiring their various interests in the Property prior to Pioneer, the Andersen Defendants established, and the Trial Court found, that when Pioneer made the loans, acquired Pioneer's Trust Deeds, and recorded Pioneer's Trust Deeds, it had actual notice, constructive record notice, and constructive inquiry notice of the Andersen Defendants' previously existing interests in the Property.

B. Relevant Course of Proceedings

Pioneer filed this action seeking to foreclose upon Pioneer's Trust Deeds. (*See* Complaints and Amended Complaints, R. at 3, 63, 582, and 2629.) Pioneer filed a Motion for Summary Judgment to foreclose Pioneer's Trust Deeds as against the owner's/developer's interest in the Property and the interests of, among others, the Andersen Defendants. (*See* Plaintiff's Motion for Summary Judgment of Foreclosure and Memorandum in Support, R. at 2962 and 2965.) In attempting to establish that Pioneer's Trust Deeds should have priority over the Andersen Defendants' interests in the Property, Pioneer asserted its interests were recorded prior to any of the Andersen Defendants' interests and relied solely on its contention that Utah's Recording Act establishes a "first in time, first in right" priority system, whereby priority is determined only "according to the order in which competing interests were recorded, with the first recorded interest having priority." (R. at 2980-2981.) Pioneer ignored, as it does in its Brief, whether Pioneer, as the

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Argument VI, below.

subsequent purchaser, purchased the property in good faith, as is explicitly and clearly required in UTAH CODE ANN. § 57-3-103 in order for a subsequent purchaser to prevail over a prior unrecorded interest. (R. at 2980 – 2981.)

The Andersen Defendants opposed Pioneer's Motion for Summary Judgment and moved for summary judgment in their favor to establish their priority in the Property over Pioneer's Trust Deeds. (R. at 3639.) In the Andersen Defendants' Summary Judgment Reply Memorandum, the Andersen Defendants established that an unrecorded interest in real property is valid and binding on a subsequent purchaser who has notice of the interest (even if the subsequent purchaser records first), and argued that Pioneer had actual and constructive notice of the Andersen Defendants' interests. (R. at 3649-3656.) Therefore, the Andersen Defendants argued their interests in the Property, whether recorded prior to Pioneer's Trust Deeds or not, had priority over Pioneer's interests in the Property (Pioneer's Trust Deeds) and a foreclosure by Pioneer on the Property would be subject to their interests. (*Id.*)

C. Disposition by the Court Below

On May 10, 2007, the Trial Court issued its Memorandum Decision ("Initial Decision"), based on the parties' summary judgment memoranda, applicable statutes and case law, and a March 28, 2007 oral argument. (R. at 4366, Appellant's Addendum at Tab 1.) In its Initial Decision, the Trial Court determined that the Andersen Defendants' interests in the Property were purchased, but not recorded, prior to the recording of the Amended Pioneer Trust Deeds, but that "[Pioneer] had constructive notice by way of record notice and inquiry notice as to [the Andersen Defendants'] interests in the property." (R. at 4381.) The Trial

Court concluded that Pioneer was not a bona fide, good faith purchaser as against the Andersen Defendants' interests and, as a result, Pioneer's recording failed to put them in a position of priority over the Andersen Defendants. (R. at 4383.)

Ultimately, the Trial Court granted Pioneer's Motion for Summary Judgment to foreclose on the Property (R. at 4385) and granted the Andersen Defendants' Motion for Summary Judgment establishing the Andersen Defendants' priority over Pioneer. (*Id.*) In short, the Trial Court authorized Pioneer's foreclosure of the Property subject to the Andersen Defendants' interests. (*Id.*)

Various proposed judgments were circulated to embody the Trial Court's Initial Decision. Pioneer filed various objections to the proposed judgments, most of which were largely irrelevant to the Andersen Defendants. One Pioneer objection concerned the priority of lots nos. 49, 50, 51, and the Honeymoon Lot (collectively, the "Location Lots") based on their location (i.e., whether they were located on Parcel -025 or Parcel -036). After briefing on the objection by all affected parties ("Location Lot Defendants"), the Trial Court issued a Memorandum Decision in March 2008 establishing that until it was determined whether the Location Lots were on Parcel -025 or Parcel -036, it could not determine the priority of the Location Lots. (R. at 4778-4779, Appellant's Addendum at Tab 2.)[5]

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5 To understand the Trial Court's treatment of the Location Lots issue, it is essential to realize all Location Lots were acquired by the Location Lot Defendants after the First Pioneer Trust Deed was recorded. Pioneer's accusation that the Trial Court flip-flops between record and inquiry notice and its allegation that the Trial Court "retreated" from the inquiry notice theory (*see* Brief of Appellant at 9) is wholly without merit. Rather, because the Location Lot Defendants acquired their interests in Parcel -036 after Pioneer, the Location Lot Defendants, (which included Brent Rhees) were subject to record notice of

On January 6, 2009, the Trial Court entered the Second Corrected Judgment and Decree of Foreclosure and Order Pursuant to the Court's December 10, 2008 Memorandum Decision ("January 2009 Judgment") (R. at 4906-4919, Appellant's Addendum at Tab 4). The January 2009 Judgment encapsulated the findings, conclusions, and orders the Trial Court previously made. At its core, it reiterated that Pioneer was not a good faith purchaser as against the Andersen Defendants because Pioneer had actual and constructive notice of the Andersen Defendants' interests and, as a result, Pioneer's Trust Deeds are inferior to and of lesser priority than the Andersen Defendants' property interests. (*Id.*) The 2009 Judgment further held that if the Location Lots were on Parcel -036, those interests would be subordinate to Pioneer's Trust Deeds (R. at 4916).[6] Ultimately, the Trial Court determined that all Location Lots were located on Parcel -036 and subordinate to Pioneer's interests in the Location Lots. (*See* Updated Order and Judgment of Priority and Foreclosure of Location Lots, dated December 16, 2009, R. at 5432-5433, Appellant's Addendum at Tab 4.)

D. Statement of Facts Relevant to Andersen Defendants

The Andersen Defendants incorporate by this reference, as if fully included herein, the statement of undisputed facts (numbered 1 through 43) contained in the Trial Court's Initial Decision, to the extent they are relevant to the Andersen Defendants' defense of this appeal.

Pioneer's interests in Parcel -036 and subject to Pioneer's priority. UTAH CODE ANN. §§ 57-3-102 and -103 were applied by the Trial Court consistently throughout these proceedings.

6 The January 2009 Judgment also dealt with the interest of certain defendants that Pioneer alleged had not paid their contracts and thus were not entitled to priority. This issue was not raised with respect to any of the Andersen Defendants and therefore is not an issue for the Andersen Defendants (see also Argument VII *infra*). The August 2010 Judgment on Payment Lots is likewise not an issue for the Andersen Defendants.

(Initial Decision, R. at 4367-4378, Appellant's Addendum at Tab 1.) The Andersen Defendants identify the following facts for clarification and/or convenience of this Court:

1. On February 19, 1988, KDA filed with the Rich County Recorder various documents for Sunrise Village, including bylaws and regulations, articles of incorporation, and maps of the property. (R. at 3606-3627.) KDA also recorded a declaration of membership plat giving a legal description of the property, and a hand-drawn plat detailing the different lots available for lease, including the phases of the planning development. (*Id.*) These recorded documents were all a matter of public record available at the Rich County Recorder's Office. (Initial Decision, R. at 4367, Appellant's Addendum at Tab 1.)

2. All Andersen Defendants acquired their interests [most from KDA Corporation ("KDA")] in the Property prior to any of the Pioneer loans and prior to the recording of any of the Pioneer Trust Deeds. (Initial Decision, R. at 4367-4369, Appellant's Addendum at Tab 1.) A chart showing many of the Andersen Defendants' interests and date of purchase is attached hereto as Addendum, Tab 3 (*see also* Exhibits 2-11 to the Andersen Defendants' Summary Judgment Reply Memorandum, R. at 3259-3381), and a chart showing the remaining Andersen Defendants' undivided leasehold interests and date of purchase is attached hereto as Addendum, Tab 4 (*see also* Exhibits 12-17 to the Andersen Defendants' Summary Judgment Reply Memorandum, R. at 3383-3415, 3419-3443).

3. Andersen Defendants Ronald Hunter, Kay Hunter, and/or the Estate of Randall Hunter recorded a Lease and Right of Way Grant Deed against the Property, Lot 18, on or about May 10, 2001. As a result of this filing, Pioneer stated and confirmed that "it does not

seek to foreclose upon or extinguish any interest of Site 18 ... in or to site 18 specifically, nor in or to Parcel -025 generally." (*See* Appellant's Addendum at Tab 8, f.n. 1, and Tab 9).

4. Andersen Defendants John D. Smidt and Linda L. Smidt, as Trustees, recorded a Lease and Right of Way Grant Deed against the Property, Lot 16, in or about June 2001. As a result of these filings, Pioneer stated and confirmed that "it does not seek to foreclose upon or extinguish any interest of the Smidt Trust Lease Documents in or to Parcel -025." (*See* Appellant's Addendum at Tab 8, f.n. 2, and Tab 9.)

5. Several leasehold interests (virtually identical interests to those of the other Andersen Defendants, except on different Lots) were recorded prior to the recording of any of the Pioneer Trust Deeds. (Initial Decision, R. at 4369, Appellant's Addendum at Tab 1.) A chart of these interests is attached hereto as Addendum, Tab 5. (*See also* Exhibits 12-17 to the Andersen Defendants' Summary Judgment Reply Memorandum, R. 3443-3489.)

6. The recorded leases describe the leased property by lot number and, by use of words like "Members Association" and "recognize other Lessees rights", indicate that Sunrise Village is an integrated development with multiple lot owners. (*See* Addendum, Tab 5; Andersen Defendants' Summary Judgment Reply Memorandum at Exhibits 18-24, R. at 3443-3489) (Initial Decision, R. at 4370, Appellant's Addendum at Tab 1.)

7. On October 12, 1999, Dennis Yarrington began preparing data for an appraisal report on the four parcels -036, -037, -038, and -025. The appraisal was commissioned by Steve Baugh to induce Ralph Call, president of Pioneer ("Ralph Call"), and brother-in-law of Steve Baugh, to finance United West's purchase of the properties. The final appraisal report,

dated November 14, 2000, was based on past and future sales of the different lots on the Property, and included descriptions of leaseholds that KDA had sold to members of Sunrise Village ("Yarrington Appraisal"). (*See* Yarrington Appraisal, Andersen Defendants' Summary Judgment Reply Memorandum at Exhibit 27, R. at 3499-3509; also see R. at 3822) (Initial Decision, R. at 4369, Appellant's Addendum at Tab 1.)

8. On or about November 13, 2000, Pioneer loaned United West the principal sum of $900,000.00. As evidence of such loan, on or about November 13, 2000, United West executed and delivered to Pioneer a "Note Secured by Deed of Trust" in the principal amount of $900,000.00. As security for repayment of the loan evidenced by the November 13, 2000 Note, and concurrent with the execution and delivery of the Note, United West, as trustor, also executed in favor of Pioneer the First Pioneer Trust Deed, conveying parcels -036, -037, and -038, in trust. At some later date not earlier than August 14, 2001, Parcel -025 was added as security for the loans made by Pioneer. All of these events occurred after each and every Andersen Defendant had acquired his or her interest in the Property. (Initial Decision, R. at 4371, Appellant's Addendum at Tab 1.)

9. Prior to recording any of the Pioneer Trust Deeds, Pioneer, or its agents, had record notice that KDA had leased many of the Lots for two consecutive 50-year terms (totaling 100 years). (Initial Decision, R. at 4372, Appellant's Addendum at Tab 1.) (*See also* Leases Recorded prior to Pioneer's Trust Deeds, Exhibits 18-24 to the Andersen Defendants' Summary Judgment Reply Memorandum, R. at 3443-3489, Addendum, Tab 5).

10. Prior to the recording of any Pioneer Trust Deed pledging Parcel -025, the Andersen Defendants were in possession of and made improvements on their leased property, including concrete pads, fences, posts, parking, gravel driveways, power meters, planted trees, flowers and gardens, sprinkler systems, lawns, landscaping, patio furniture, a fire pit, family signs, etc. (most of which were done prior to the recording of the First Pioneer Trust Deed). (*See* Table Summarizing Andersen Defendant's Affidavits as to Improvements Made and Date of Improvements Made ("Table of Improvements"), attached hereto as Addendum, Tab 6.) There were individual Utah Power and Light meters to each Lot and recreational vehicles parked on various Lots. (Initial Decision, R. at 4372, Appellant's Addendum at Tab 1) (*see also* Affidavits of Andersen Defendants, Andersen Defendants' Summary Judgment Reply Memorandum at Exhibits 29-43, R. at 3517-3581, and Addendum, Tab 6.)

11. The Andersen Defendants used their Lots prior to and since the time Pioneer recorded its deeds. (*Id.*) (Initial Decision, R. at 4373, Appellant's Addendum at Tab 1.)

12. Pioneer made no inquiry whatsoever as to the Andersen Defendants' possible interests in the Property. (Initial Decision, R. at 4372, Appellant's Addendum at Tab 1.)

13. In approximately April of 2001, Ralph Call and Steve Baugh personally visited the Property, giving Pioneer actual knowledge of the Defendants' uses and improvements of the Property to the extent these were visible. (Initial Decision, R. at 4372, Appellant's Addendum at Tab 1.)

SUMMARY OF ARGUMENT

Pioneer's appeal is an attempt by a commercial lender with a bad loan to rewrite and/or circumvent Utah's Recording Act, thereby allowing the lender, Pioneer, to deflect the financial consequences of its bad loan onto the Andersen Defendants – innocent, unsophisticated, and good faith purchasers of real property interests in the Property. Utah's Recording Act is clear in language and application, as evidenced by Utah case law, that a subsequent purchaser of property is protected against a prior unrecorded interest in the same property only if the subsequent purchaser purchased the property in good faith and without notice, whether actual or constructive, of the prior unrecorded interest.

The Trial Court was correct in determining Pioneer was not a good faith purchaser of its interests in the Property, as compared to the Andersen Defendants' prior interests therein. The Trial Court determined Pioneer had actual notice and constructive record notice of the Andersen Defendants' interests in the Property prior to acquiring and recording its own interest in the Property, sufficient grounds to prevent Pioneer from being protected under Utah's Recording Act. The Trial Court's determinations of Pioneer's actual and constructive record notice were not appealed by Pioneer and, therefore, this Court should defer to and uphold the Trial Court's conclusions.

Further, the Trial Court was correct in its determination that Pioneer had constructive inquiry notice of the Andersen Defendants' interests in the Property. When a person has actual knowledge of certain facts and circumstances that are sufficient to give rise to a duty to inquire further, if such inquiry and investigation would have resulted in the discovery of

the prior interests, the subsequent purchaser is not entitled to priority over the prior, unrecorded interests and is not a good faith purchaser.

Pioneer was aware of, or should have been aware of, sufficient facts and circumstances regarding the Andersen Defendants' interests to give rise to a duty on Pioneer's part to inquire further into the Andersen Defendants' interests, especially given the fact Pioneer is making a $1.5 million dollar loan. Ralph Call visited the Property and admittedly saw occupation of and improvements to various Lots on the Property, and Pioneer had, or had access to, recorded leases that clearly indicated that Sunrise Village is an integrated development with multiple lot owners or leaseholders. Various other documents, including regulations, bylaws, articles of incorporation, maps, a declaration of membership plat, and a plat detailing the different lots available for lease, were recorded, available to Pioneer, and indicated the presence of multiple lot owners. Also, Pioneer had access to the Yarrington Appraisal which expressly identified several of the Andersen Defendants' interests (R. at 3499-3509, 3796-3796, 3799-3801, 3822).

Based upon the foregoing, Pioneer had a duty to inquire as to the Andersen Defendants' interests. This inquiry, which could have been a simple telephone call to the Sunrise Village Members' Association, would have led to the discovery of all Andersen Defendants' interests. Therefore, Pioneer had inquiry notice of the Andersen Defendants' interests and, as a result, is not protected by Utah's Recording Act.

It is well established that summary judgment is only precluded on a factual dispute when a material fact is genuinely controverted. Pioneer contends three issues of material fact

preclude summary judgment: the existence and extent of improvements on the Property, Pioneer's actual knowledge of the improvements, and Pioneer's receipt and review of the Yarrington Appraisal. However, these facts are either not material or not genuinely controverted.

First, the extent of the improvements made to the Property was established by Affidavits taken from each Andersen Defendant. These Affidavits have never been disputed. Ralph Call stating that he did not see them, or that they were covered by snow, is insufficient to create a dispute of fact. Second, Ralph Call admitted in his 2006 Affidavit that he saw and had actual knowledge of improvements on the Property. The extent of the improvements Ralph Call had actual knowledge of is immaterial, as the Trial Court's inquiry notice ruling relies only on improvements Ralph Call admitted seeing. Third, it is undisputed Pioneer knew of and had access to the Yarrington Appraisal prior to making its loan that encumbered Parcel -025. Whether Pioneer had the appraisal prior to its First Trust Deed is immaterial.

Finally, the omission in the 2009 Judgment of the phrase "of record" when the court was quoting only a portion of a warranty deed, the date Pioneer effectively encumbered Parcel -025, the Payment Lot issues, and the title insurance issues, are not an issue to the Andersen Defendants, except as otherwise provided herein. If it is determined Pioneer did not effectively encumber Parcel -025 until it recorded its Corrected Affidavit on September 24, 2002, or until it recorded its Settlement Deed on March 14, 2005, Pioneer would have additional record notice of all Andersen Defendants' interests that were recorded, as shown in Addendum at Tab 7, prior to the date Pioneer is deemed to have encumbered Parcel -025.

This Court should determine there are no genuine disputes of material fact and, as a matter of law, Pioneer was not a good faith purchaser entitled to protection by Utah's Recording Act. This Court should affirm the Trial Court's decision.

ARGUMENT

I. THE TRIAL COURT PROPERLY ENTERED SUMMARY JUDGMENT IN FAVOR OF THE ANDERSEN DEFENDANTS AS THERE ARE NO GENUINE DISPUTES OF MATERIAL FACT AND THE ANDERSEN DEFENDANTS ARE ENTITLED TO JUDGMENT AS A MATTER OF LAW

At the Trial Court level, a court may render summary judgment "if the pleadings...on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." UTAH R. CIV. P. 56(c). Only disputed facts that are relevant, material, and genuine can bar summary judgment. *See generally Wintour v. Nw. Pipeline Corp.*, 820 P.2d 916 (Utah 1991); *Murdock v. Springville Mun. Corp.*, 1999 UT 39, 982 P.2d 65.

In ruling on a summary judgment motion, a court reviews the facts in the light most favorable to the non-moving party, but "bald statements do not suffice to establish a genuine issue of material fact." *Rawson v. Conover*, 2001 UT 24, ¶33, 20 P.3d 876. "An adverse party may not rest upon the mere allegations or denials of the pleadings, but the response...must set forth specific facts showing that there is a genuine issue for trial." UTAH R. CIV. P. 56(e). "Once the moving party challenges an element of the non-moving party's case on the basis that no genuine issue of material fact exists, the burden then shifts to the non-moving party to present evidence that is sufficient to establish a genuine issue of material fact." *Shaw Res. Ltd. v. Pruitt, Gushee & Bachtell, P.C.*, 2006 UT App 313, ¶22, 142 P.3d 560.

On appeal, summary judgments are reviewed for correctness. *Bahr v. Imus*, 2011 UT 19, ¶16, 250 P.3d 56. An appellate court in such an instance "make[s] its own decision on the correctness of summary judgment, reviewing the same paper record that was before the trial court to decide whether there are genuine issues of material fact and whether the moving party is entitled to judgment as a matter of law." *Id.* at ¶ 17. The Utah Supreme Court has stated "[w]e affirm a grant of summary judgment only if there are no disputed issues of material fact and if, viewing the undisputed facts and all reasonable inferences in the light most favorable to the nonmoving party, we determine that the moving party was entitled to judgment as a matter of law." *Neff v. Neff*, 2011 UT 6, ¶ 47, 247 P.3d 380.

As to the Andersen Defendants, the requisite material facts in this case are undisputed, support summary judgment, and are taken directly from the uncontroverted evidence presented to the Trial Court. Therefore, this Court should uphold the Trial Court's decision granting the Andersen Defendants' Cross-Motion for Summary Judgment.

II. PIONEER HAD ACTUAL AND CONSTRUCTIVE NOTICE OF THE ANDERSEN DEFENDANTS' CLAIMS IN AND TO THE PROPERTY AT ISSUE IN THIS DISPUTE AND THEREFORE DID NOT TAKE IN GOOD FAITH

Pioneer had actual and constructive notice (including both constructive record notice and constructive inquiry notice) of the Andersen Defendants' interests and claims in and to the Property. Therefore, any foreclosure by Pioneer on the Property, or any portion of the Property, should be subject to any and all interests claimed by the Andersen Defendants, as owners, leaseholders, and right of way holders. Pioneer's rights in the Property created by Pioneer's Trust Deeds are inferior to the property interests of the Andersen Defendants.

Pioneer asserts that "[f]or determining the priority of interests in real property, the Utah Legislature has enacted a recording statute which, as a matter of law, codifies the rule of 'first in time, first in right.'" (Brief of Appellant at 28.) Pioneer continues, "[p]ursuant to Utah's recording statute, priority is determined according to the order in which competing interests were recorded, with the first-recorded interest having priority." (*Id.*) However, contrary to Pioneer's assertions, Utah is a "race-notice" jurisdiction when it comes to its recording statute, not simply a "race" jurisdiction as Pioneer would have this court believe. *Haik v. Sandy City*, 2011 UT 26, ¶13, 682 Utah Adv. Rep. 17. In other words, "first in time" is not always "first in right" under Utah's Recording Act. Utah's Recording Act provides:

> Each document not recorded as provided in this title is void as against any subsequent purchaser of the same real property, or any portion of it, if: (1) the subsequent purchaser purchased the property in good faith and for a valuable consideration; and (2) the subsequent purchaser's document is first duly recorded.

UTAH CODE ANN. § 57-3-103 (Supp. 2010); *see also U.P.C. v. R.O.A. Gen., Inc.*, 1999 UT App 303, 990 P.2d 945 (an unrecorded interest in real property is valid and binding on a subsequent purchaser who has notice of the interest even though the subsequent purchaser records first). To do as Pioneer requests and treat Utah's Recording Act as a "race" statute, rather than a "race-notice" statute, would overlook the "good faith" component of the statute and alter the clear legislative intent and language of the Utah Recording Act itself.

Utah law provides that a "subsequent purchaser for value prevails over a previous purchaser if the subsequent purchaser (1) takes title in good faith and (2) records before the

previous purchaser." *Haik,* 2011 UT 26, ¶13. To take title to property in "good faith," well-defined Utah case law provides:

> To be in good faith, a subsequent purchaser must take title to the property without notice of a prior, unrecorded interest in the property. [The Supreme Court of Utah] recognizes two types of notice: (1) actual notice and (2) constructive notice. Actual notice arises from actual knowledge of an unrecorded interest or infirmity in the grantor's title. Constructive notice can be either inquiry or record notice.

Id. at ¶14 (internal citations and quotations omitted); *see also Salt Lake County v. Metro W. Ready Mix, Inc.*, 2004 UT 23, ¶13, 89 P.3d 155; *First Am. Title Ins. Co. v. J.B. Ranch, Inc.*, 966 P.2d 834, 838 (Utah 1998).

The Trial Court summarized Utah's constructive notice law as it relates to priority of competing interests in real estate (by referring to this Court's *First Am. Title Ins. Co.,* 966 P.2d 834, 837-38 (Utah 1998) decision), as follows:

> There are two types of constructive notice that are generally recognized. One kind of constructive notice is notice which results from a record or which is imputed by the recording statutes; and the other is notice which is presumed because of the fact that a person has knowledge of certain facts which should impart to him, or lead him to, knowledge of the ultimate fact. Utah law recognizes both types of constructive notice. The first type is evidenced in UTAH CODE ANN. § 57-3-2(1) [now UTAH CODE ANN. § 57-3-102(1)], which provides that documents and instruments filed with the county recorder pursuant to § 57-3-2(1) [now UTAH CODE ANN. § 57-3-102(1)] impart notice to all persons of their contents. Utah case law has also recognized the second type of constructive notice, inquiry notice.
>
> ... Inquiry notice occurs when circumstances arise that should put a reasonable person on guard so as to require further inquiry on his part. Whatever is notice enough to excite attention and put the party on his guard and call for inquiry is notice of everything to which such inquiry might have led. When a person has sufficient information to lead him to a fact, he shall be deemed conversant of it.

See also Initial Decision, R. at 4380 (quoting the above).

Pioneer is not entitled to protection by Utah's Recording Act because Pioneer did not acquire its interest in the Property in good faith, which is a necessity for protection under said Act. Rather, Pioneer acquired its interest in the Property after having actual notice, constructive record notice, and constructive inquiry notice of the Andersen Defendants' interests in the property. Therefore, the Andersen Defendants' unrecorded interests are superior to and take priority over Pioneer's recorded interests in the Property.

A. Pioneer did not take the Property in good faith because it had actual notice of the Andersen Defendants' claims and interests in and to the Property. The Trial Court's adjudication of actual notice was not appealed by Pioneer.

The Andersen Defendants' interests in the Property are superior to and have priority over Pioneer's interests in the Property because Pioneer had actual notice of the Andersen Defendants' interests in and to the Property. It is clear Utah's Recording Act is a race-notice statute which requires lack of actual notice or knowledge of an unrecorded interest or infirmity in the grantor's title for a subsequent purchaser to prevail in multiple conveyances of the same land. *Haik*, 2011 UT at ¶14 (citing *Salt Lake County.*, 2004 UT at ¶13). Actual notice arises from actual knowledge of an unrecorded interest or infirmity in the grantor's title. *Id.*

In its January 2009 Judgment, the Trial Court unequivocally holds that "[Pioneer] had actual ... notice of the Andersen Defendants' ... respective interests in Parcels 1[7] and 2 of the

7 The terms "Parcel 1" and "Parcel 2" refer to Parcel -025 and Parcel -036, respectively. All real property interests in controversy of any and all of the Andersen Defendants, as defined herein, are located either on Parcel 1 or Parcel 2.

Property." (R. at 4912.) This is a separate, distinct, and sufficient ground to uphold the Trial Court's decision regarding the priority of the parties' property interests.

Because Pioneer did not appeal this issue, this issue is not before this Court, and must be upheld. *See Smith v. Osguthorpe,* 2006 UT App 425, 2006 Utah App. LEXIS 471 at *2 ("any portion of a judgment not appealed from continues in effect"); *DeGrazio v. Legal Title Co.,* 2006 UT App 183, 2006 Utah App. LEXIS 193 at *7 ("when a party does not appeal an issue, that issue is not before the appellate court"); *Greenwood v. North Salt Lake*, 817 P.2d 816, 818 (Utah 1991) ("North Salt Lake does not appeal the Trial Court's ruling holding a portion of the ordinance unconstitutionally vague, and that issue is not, therefore, before this Court"); *Wilde v. Mid-Century Ins. Co.*, 635 P.2d 417, 418-19 (Utah 1981) (holding a judgment not appealed may not be attacked on appeal); *Jenkins v. State*, 585 P.2d 442, 445 (Utah 1978) (holding "[The Supreme Court of Utah] cannot rule on a matter not before [the Court]. In short, there is no jurisdiction for this Court to affirm a matter below when that matter has not been appealed").

Pioneer did not appeal the Trial Court's conclusion that Pioneer had actual notice of the Andersen Defendants' interests in the Property. Therefore, Pioneer's actual notice is not an issue before this Court, and this Court should defer to the Trial Court's determination. Pioneer's actual notice and knowledge of the Andersen Defendants' interests in the Property, as was determined by the Trial Court, precludes Pioneer, as a subsequent purchaser, from obtaining priority of the Andersen Defendants' prior claims and interests in and to the

Property. Based on this alone, the Trial Court's determinations regarding priority of the parties' respective interests should be affirmed.

B. Pioneer did not take the Property in good faith because it had constructive record notice of the Andersen Defendants' interests. The Trial Court's adjudication of constructive record notice was not appealed by Pioneer.

The Andersen Defendants' interests in the Property are superior to and have priority over Pioneer's interests in the Property because Pioneer had constructive record notice of the Andersen Defendants' interests in and to the Property. To take in good faith requires that the subsequent purchaser take title to the property without, *inter alia*, constructive record notice of the prior interest. Record notice results from a record or is imputed by the recording statutes. Thus, purchasers of real property are charged with having record notice of the contents of recorded documents.

In its January 2009 Judgment, the Trial Court held "Plaintiff had ... constructive notice of the Andersen Defendants' ... respective interests in Parcels 1 and 2 of the Property." The Initial Decision, upon which the January 2009 Judgment is based in part, explains the Trial Court's finding of constructive record notice as follows:

> [Pioneer] had constructive notice by way of record notice ... as to [the Andersen Defendants'] interests in the property. Plaintiff had available to it the descriptions and plats recorded on behalf of Sunrise Village RV Park and the KDA-United West and KDA-Pine Ridge Purchase and Sale Agreement, which provided the buyer with the right to lease the 24 remaining lots on parcel 025. Plaintiff had record notice of numerous existing leaseholders. Plaintiff also had available the warranty deeds that limited the interest conveyed, and also provided record notice of existing and future agreements, memberships, and leases.

(*See* Initial Decision, at 16, R. at 4381, Appellant's Addendum at Tab 1.)

The Trial Court also made findings on record notice to support the aforementioned conclusions, including the following:

1. On February 19, 1988, KDA filed with the Rich County Recorder various documents for its Sunrise Village RV Park, including regulations, by-laws of the members' association, articles of incorporation, and maps of the property. Also on this date, KDA recorded a declaration of membership plat giving a legal description of the property, and a hand-drawn plat detailing the different RV Lots available for lease, including the phases of the planned development. These recorded documents were all a matter of public record available at the Rich County Recorder's Office.

4. Several leasehold interests (virtually identical interests to those of the other KDA Defendants, except on different Lots) were recorded prior to the recording of the Pioneer trust deeds. The owners of those leases recorded prior to the Pioneer Trust Deed are not named as Defendants, including....

5. The recorded leases describe the leased property by site number. By use of the words "Members Association" and "recognize other Lessees rights" in all of the leases, such leases indicate that Sunrise Village is an integrated development with multiple lot owners or leaseholders.

8. On September 18, 2000, in anticipation of the transaction from KDA to United West conveying lots -036, -037, and -038 (RV Park Property), Harold Heninger (principal of KDA) and Joseph Hardy (principal of United West, and later of Pine Ridge) reached a "letter of understanding," which acknowledges that Hardy would release the 5 acres of -025 to the homeowner's association when the 24th lot of the RV park initial phase was sold.

9. On October 17, 2000, KDA and United West executed a "purchase and sale agreement," which shows that parcels -036, -037, and -038 were to be conveyed to United West, but that parcel -025 was not intended to be conveyed, though the right to lease the remaining unsold lots in -025 was given to United West.

   On November 13, 2000, KDA conveyed parcels -036, -037, and -038 to United West via warranty deed.

(Initial Decision, R. at 4367-4378, Appellant's Addendum at Tab 1.)

In addition to Pioneer's failure to appeal the Trial Court's conclusion discussed above regarding actual notice, Pioneer likewise failed to appeal the Trial Court's conclusion that Pioneer had constructive record notice of the Andersen Defendants' prior interests in the Property. Pioneer's constructive record notice of the Andersen Defendants' prior interests is not an issue before this Court, and this Court should affirm the Trial Court's determination that Pioneer was on constructive record notice of the Andersen Defendants' interests.

C. Pioneer did not take the Property in good faith because it had constructive inquiry notice of the Andersen Defendants' claims and interests in and to the Property.

Pioneer had constructive inquiry notice of the Andersen Defendants' interests in the Property and, as a result of such inquiry notice, Pioneer's interests in the Property are subordinate to the Andersen Defendants' interests. Inquiry notice is properly imposed against a subsequent purchaser when the subsequent purchaser has actual knowledge of certain facts and circumstances that give rise to a duty to inquire further. *See Haik*, 2011 UT at ¶14. Further, "[w]hatever is notice enough to excite attention and put the party on his guard and call for inquiry is notice of everything to which such inquiry might have led" and such party should be deemed conversant of it. *First Am. Title Ins. Co.*, 966 P.2d at 838. Finally, a subsequent purchaser has inquiry notice of any unrecorded interests of parties in open and notorious possession of the property. *Salt Lake. G. & W. R.R. v. Allied Materials Co.*, 291 P.2d 883 (Utah 1955); *U.P.C.*, 1999 UT App 303; *Ault v. Holden*, 2002 UT 33, ¶ 42, 44 P.3d 781 (citing *Mathis v. Madsen*, 261 P.2d 952, 959 (Utah1953)).

This Court in its *Haik v. Sandy City* decision recently commented on inquiry notice.[8] The *Haik* decision emphasizes the low level of actual information needed by a subsequent purchaser to trigger application of inquiry notice. In *Haik*, opposing parties' priority to a certain water right was at issue. 2011 UT at ¶¶ 3-9. Sandy City purchased the water right first, and recorded an Agreement of Sale with the county recorder in 1977, but the deed evidencing such conveyance was not recorded by Sandy City until 2004. *Id.* In 2003, the Haik parties purchased the same water right and promptly recorded the deed. *Id.* The issue in *Haik* was whether the Agreement of Sale (which this Court treated as an executory contract) put the Haik parties on record notice of Sandy City's unrecorded interest in the disputed water right. *Id.* at ¶ 11. It was determined the Agreement of Sale put the Haik parties on record notice that Sandy City had an equitable interest in the water right. *Id.* at ¶ 12. While record notice of an equitable interest in property can subvert a subsequent purchaser's claim of having purchased in good faith, this Court held it did not in this case because the Haik parties reasonably believed they had clear and inviolate title, 27 years had passed since the Agreement of Sale was recorded with no deed being recorded, and the Haik parties' predecessors in interest had maintained and possessed the water right and filed a

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8 Pioneer classifies inquiry notice as a "rare exception to the general rule of record notice under Utah's recording statute." (Brief of Appellant at 29.) First, Utah's Recording Act protects subsequent purchasers only if the subsequent purchaser takes in good faith without notice of the prior interest. Second, inquiry notice is not an exception to a general rule, but rather is the general rule, in that consideration of inquiry notice is necessary to determine whether the subsequent purchaser acquired the interest in good faith. *See* UTAH CODE ANN. § 57-3-103.

change application in 1999, all without Sandy City contesting ownership to the water right. This Court found for the Haik parties on these grounds.

Despite the fact the Court did not apply inquiry notice, it commented on inquiry notice as follows:

> Inquiry notice is not at issue in this case because the Haik Parties did not have actual knowledge of any facts, such as the existence of the Agreement of Sale, giving rise to a duty to inquire further. *See J.B. Ranch*, 966 P.2d at 838 ("[I]nquiry notice arises from knowledge of certain facts and circumstances, not from records."). Had the Haik Parties known of the Agreement of Sale, they would have had actual knowledge about the possible defect in title and would have been on inquiry notice to inquire further. And upon further inquiry, it is likely that the Haik Parties would have discovered Sandy City's deed to the water right.

Id. at f.n. 14. (emphasis added) Thus, if the Haik parties had simply known of the Agreement of Sale's existence, this Court, in determining priority of competing interests, would have applied inquiry notice, and found in favor of Sandy City. *Id.*

In *U.P.C.*, a company leased a small part of a parcel of property to post a large sign. 990 P.2d at 949. The lease was not recorded until two years after the property was sold and the new deed recorded. The Court determined that the lease was valid and binding on the new owner because the new owner had knowledge of the existence of the sign which created a duty to inquire. *Id.* at 954. The Court concluded that "a simple telephone call...could have confirmed or dispelled any question" regarding the lease interest. *Id.* As in *U.P.C.*, a simple telephone call by Pioneer to the Sunrise Village Members' Association would have let Pioneer know of the Andersen Defendants' interests in the Lots. (*See* Affidavit of Ken Depew in Support of Motion for Summary Judgment, Andersen Defendants' Summary

Judgment Reply Memorandum at Exhibit 44, R. at 3588 (Ken Depew, President of the Sunrise Village Homeowners' Association, stating Pioneer did not contact him regarding potential interests in the Property, and affirming that if Pioneer had done so, he would have disclosed all leasehold interests, recorded and unrecorded).)

In another Utah Supreme Court case, this Court adopted the statement that "[p]ossession of land is notice to the world of every right that the possessor has therein." *Allied Materials Co.*, 291 P.2d at 886 (quoting 39 Am. Jur. Section: 18, p. 242). In *Allied*, this Court ruled that a purchaser was on inquiry notice when an interested party had personal property on the premises. *Id.* The mere presence of poles and wires on a part of the property amounted to possession of the land which put the subsequent purchaser on notice of the interest. *Id.*

In *Arnold Indus., Inc. v. Love*, 2002 UT 133, 63 P.3d 721, the Utah Supreme Court held that when a purchaser observed use of the land, he had inquiry notice of a right of way across the property. In *Arnold*, inquiry notice was applied, and the subsequent purchaser was required to search within the public record, but the duty to inquire was not limited to inquiry into the public record. *Id.* It requires steps be taken in addition to search of the public record, such as inquiry by telephone call to a party with a potential interest. *Id.*

Pioneer was aware of circumstances that did, or should have, put Pioneer on guard as to the possible existence of the Andersen Defendants' claims to the Property. The Trial Court was correct in it its lawful application of inquiry notice to the case at hand based, in

part, on Ralph Call's April 2001 visit to the Property. In his October 2006 Affidavit, Ralph Call admits he visited the Property in April 2001 and admits to seeing improvements:

> The first time I went to the property that is the subject of this case was in April of 2001 and I did not re-visit the site until after August 2001. The purpose of that visit was to pick out a portion of the property that was to be conveyed to me. There was snow on the ground when I was there. At most there were four or five recreational vehicle camper trailers parked in various spots on the property. I saw a few concrete slabs in scattered places where the snow had melted. There was a lodge on the property, and some small, narrow roads. I did not see or notice any improvements of any type or nature to any part or portion of the property that is the subject of this case when I was there in April of 2001, other than as set forth in this paragraph...

(*See* October 2006 Affidavit of Ralph Call, R. at 4250, Appellant's Addendum at Tab 15), (emphasis added). Based on this affidavit admission, the Trial Court determined "Ralph Call visited the Lot in April of 2001 and saw improvements." (*See* Initial Decision, R. at 4381 (parentheticals omitted), Appellant's Addendum at Tab 1.) The Trial Court continued, "Even with the improvements indicated in Mr. Call's affidavit, [and snow covering the ground,] a reasonable person would have been put on guard and inquired further into the improvements." (*Id.*)

Further, Pioneer had actual and/or record notice of the recorded leases and various Sunrise Village documents, including regulations and bylaws of the Sunrise Village Members Association, articles of incorporation, maps of the Property, a declaration of membership plat giving a legal description of the property, a plat detailing the different lots available for lease (*see*, e.g. Andersen Defendants' Summary Judgment Reply Memorandum, Exhibits 18-24, 27, 47-48 (R. at 3643-3648, 3442-3489, 3498-3509, 3606-3627), and the Yarrington Appraisal (Pioneer undisputedly had access to at least the first few pages of the Yarrington

Appraisal prior to recording the Amended Pioneer Trust Deeds on August 14, 2001) (*see* Argument III.c. below for more detailed discussion of the Yarrington Appraisal), all of which reflected the fact that the Property had been divided into many different Lots and that at least some of those Lots had been leased. All of this information was at Pioneer's fingertips (to compare, in *Haik*, actual knowledge of a 30 year old Agreement of Sale alone, would have put the subsequent purchaser on inquiry notice). The Trial Court was correct in putting Pioneer on inquiry notice and determining Pioneer "knew lots existed" on the Property and Pioneer "could simply check membership records or even count the 'unsold lots' from the total platted to determine if the improvements were on lots that had been recorded or not." (*Id.* at 4381.)

Pioneer, like the purchasers in *U.P.C.*, *Allied Materials Co.*, and *Arnold*, possessed knowledge of the lessees' use of the land which was evident from the admitted improvements seen by Ralph Call on his visit. In the present case, the possession is much more obvious, extensive, and evident than the mere sign posted in *U.P.C.,* and the presence of poles and wires in *Allied Materials Co.* The Andersen Defendants were in possession of the land and their undisputed substantial improvements. (*See* Table of Improvements, attached hereto as Addendum, Tab 6.; *see also* Affidavits, Andersen Defendants' Summary Judgment Reply Memorandum at Exhibits 29-43, R. at 3517-3581.) The Affidavits of improvements made by the Andersen Defendants to the Property are unrebutted, regardless of whether Mr. Call acknowledges seeing them while there was "snow on the ground".

Further, Pioneer's duty of inquiry should be enhanced due to the fact that when Pioneer loaned additional funds, and took the Amended Pioneer Trust Deeds as security (which attempted to include Parcel -025), the grantor of the trust deed, Pine Ridge, did not have record title of Parcel -025. (*See* Warranty Deed from KDA to Pine Ridge transferring title of Parcel -036 and others, but not transferring title of Parcel -025 to Pine Ridge, R. at 4178-4179, Appellant's Addendum at Tab 11.) Pine Ridge did not obtain record title to Parcel -025 until 2005, when a Quit Claim Deed from KDA to Pine Ridge was recorded after the parties settled their disputes with one another. (*See* Quit Claim Deed, R. at 4174-4176, Appellant's Addendum at Tab 13.)

In *Salt Lake County*, 2004 UT at ¶¶ 15-19, 89 P. 3d 155, this Court held "a purchaser who acquires property through a wild deed [one executed by a grantor without record ownership of the interest] will be held to have been on notice of a defect in his grantor's title and will not qualify as a subsequent purchaser in good faith for purposes of Utah's Recording Statute." Because Pioneer's grantor did not have record title of Parcel -025 (*see* Warranty Deed, Affidavit Concerning Recorded Instruments, and Quit Claim Deed, Appellant's Addendum at Tabs 11, 12, and 13, respectively), and was thus founded on a wild deed, it is clear Pioneer was not a good faith purchaser entitled to protection under Utah's Recording Statute. The Andersen Defendants should not be punished for Pioneer's failure to inquire further into the status of the Property before making additional loans.

Despite Pioneer's admitted knowledge of the improvements visible at the time of Ralph Call's visit to the Property, and other unique circumstances evidencing competing

interests in the Property, Pioneer failed to make any calls or otherwise communicate or inquire regarding the Andersen Defendants' interests. (*See* Initial Decision, R. at 4381 ("[Pioneer] either failed or refused to make any inquiry").) Such calls, communications, and/or inquiries would easily and certainly have led to the discovery of the Andersen Defendants' interests, evidenced by the fact that the Yarrington Appraisal disclosed the Andersen Defendants' interests. (*See* Yarrington Appraisal, R. at 3822 (Map included in Yarrington Appraisal identified each Andersen Defendant Lot as "sold") and 3796-3797, 3799-3801 (used five Andersen Defendants' Lots as comparables.) Pioneer could have, and should have, done the same.

Pioneer would have this Court believe that secured lending would be turned on its head if inquiry notice is applied in this case. (*See* Brief of Appellant at 31.) Pioneer further states that a "lender could never be certain of all interests". (*Id. at 30-34*) Constructive inquiry notice does not require a lender to be certain of every interest, but rather requires a lender (or subsequent purchaser) to take steps a reasonable person would take to determine claimants of property interests in the subject parcel. Such does not, and has not, turned the secured lending industry "on its head" and is not contrary to public policy. In fact, the case for application of inquiry notice is strengthened in this case because Pioneer, as a lender loaning $1.5 million dollars, should, as a matter of public policy and industry norms, be even more diligent in verifying the status of the property used as security. Public policy would be harmed by protecting a lender who turns a blind eye to substantial evidence of contrary interests in the Property it takes as security, and then claims priority because it won the race

to the county recorder's office. The Trial Court, in accordance with established Utah law, properly applied inquiry notice against Pioneer.

In support of its contention that inquiry notice was improperly applied by the Trial Court, Pioneer relies almost exclusively on Utah bankruptcy court cases, placing most of its reliance on the case of *In re Granada, Inc.*, 92 B.R. 501 (Bankr. D. Utah 1988). (*See* Brief of Appellant at 32.) While concededly the inquiry notice standard is applied in *Granada*, the facts are not comparable with the case at issue.

Granada involved a bankruptcy debtor who purchased an entire mobile home park, comprised of individual mobile home park units that were rented to tenants. The entire mobile home park was later conveyed to or acquired by a subsequent party, who did not record its interest. The bankruptcy trustee is attempting to avoid the subsequent party's interest and include the entire mobile home park in the debtor's bankruptcy estate, arguing a bona fide purchaser would not have been on notice of the subsequent purchaser's interest in the mobile home park as of the petition filing date. The issue in *Granada* regards ownership of and priority to the mobile home park development as a whole, not to individual claimants of parts and parcels of the mobile home park or to claims from those tenants renting the mobile homes located within the mobile home park.

The discussion of inquiry notice in *Granada* concerned whether the inspection of the property on the petition filing date would have revealed the ownership interests of the subsequent purchasers, not of the interests of the tenants of the mobile home park. Therefore, contrary to Pioneer's arguments, this case is factually unique and inapplicable to

the case at hand. The case at hand does not involve priority of the developer's interest, but rather of the Andersen Defendants' 100-year entitlement to and rights in the Property, evidenced by two consecutively running 50-year leases and grants of right of way. *Granada* is akin to determining the priority of the owners of an apartment complex, rather than leaseholders. A purchaser of an apartment complex typically takes subject to the rights of existing leaseholder, in possession, most with unrecorded leases.

Granada held that there was nothing an inspection would have produced which was inconsistent with record title. In the case at issue, through the facts admitted by Pioneer and the unrebutted facts of the Andersen Defendants, and as determined by the Trial Court, a reasonable inspection of the Property would have (and admittedly did (*see* October 2006 Affidavit of Ralph Call, R. at 4250, Appellant's Addendum at Tab 15)) produced knowledge that was inconsistent with record title. Pioneer admitted to seeing improvements to various Lots that were of a permanent nature, such as cement slabs. (*Id.*) These are not simply seasonal improvements, and the Andersen Defendants' interests were not limited to seasonal use, as alleged by Pioneer. Such improvements and conditions are not of the nature of what you would expect to see in an RV Park. (*Id.*) As the Trial Court stated,

> Even with the improvements indicated in [Ralph] Call's affidavit, a reasonable person would have been put on guard and inquired further into the improvements, especially if one had a trust deed for over 1.5 million dollars that would be jeopardized if it was junior to any other interest. [Pioneer] either failed or refused to make any inquiry. [Pioneer] knew lots existed and could simply check membership records or even count the "unsold lots" from the total platted to determine if the improvements were on lots that had been recorded or not. If it was determined that some of the lots had not been *recorded* then it would seem that a reasonable person would inquire to see if the lots had been *sold/leased*.

(Initial Decision, R. at 4381-4382.) This Court's *Mathis* decision holds "[a]ctual possession . . . when open, visible, and exclusive, will put upon inquiry those acquiring any title to or a lien upon the land so occupied to ascertain the nature of the rights the occupants really have in the premises.") 261 P.2d at 959. Admittedly, Ralph Call knew various lots existed on the Property and saw open, visible, and exclusive actual possession of said various Lots within the Property, but Pioneer failed in its duty to inquire with those in possession as to the nature of the rights of the occupants in the premises. Pioneer failed in its duty to determine the nature of the possessors' interests. *See Patel v. Rupp*, 195 B.R. 779, 784 (D. Utah 1996) (a purchaser as part of its duty of inquiry "has to inquire of any persons in actual physical possession of the property of the extent of their interests" and must "learn of that potentially adverse claim upon inquiring of that person of their interest"). Such an inquiry would have led to the discovery of the Andersen Defendants' interests.

This Court held in *Ault*, that:

> In race-notice states like Utah, a purchaser takes subject to rights of parties in possession that are open and visible. In other words, possession by someone other than the seller engenders a duty to inquire on the part of the purchaser into the rights of the party in possession.

2002 UT 33 at ¶ 42. According to the record, Pioneer made no inspection of the Property prior to taking an interest in it upon making its first loan in November 2000. All Andersen Defendants acquired their interests prior to that date, had made improvements to their respective Lots prior to November 2000 (*See* Table of Improvements, Addendum at Tab 6), and were in "open and visible" possession of their respective Lot interests in the Property.

Thus, pursuant to *Ault*, Pioneer takes subject to the Andersen Defendants' interests. Had Pioneer made an inspection of the Property prior to making the first loan and taking the First Trust Deed or prior to taking the Modified Trust Deed without "snow cover," as any prudent lender should do, it would have discovered the Andersen Defendants' substantial improvements to and possession of the Property.

Pioneer had notice enough to "excite its attention," put it on guard, and require further inquiry on its part. A simple telephone call by Pioneer to the Sunrise Village Members' Association would have confirmed or dispelled any question regarding the leases. (*See* Affidavit of Ken Depew in Support of Motion for Summary Judgment, Andersen Defendants' Summary Judgment Reply Memorandum at Exhibit 44, R. at 3588.) With one telephone call, Pioneer could have requested and received a list of all the leased Lots, including the names and addresses of the lessees. (*Id.*) Therefore, the Trial Court correctly put Pioneer on inquiry notice of everything to which a reasonable inquiry given the circumstances might have led, and was correct in its determination that such inquiry would have led to the discovery of the Andersen Defendants' interests in the Property.

Further, even assuming *arguendo* that the Trial Court's application of inquiry notice is inappropriate as is argued by Pioneer, such application is not reversible error, because the Trial Court also held that Pioneer had actual notice and constructive record notice of all the Andersen Defendants' interests in the Property. Either of these notices alone is sufficient to affirm the Trial Court's decision.

III. THE TRIAL COURT'S ORDER OF SUMMARY JUDGMENT WAS NOT BASED ON ANY DISPUTED MATERIAL FACTS

At the Trial Court level, Pioneer did not raise any genuine issues of material fact that would preclude the Trial Court's summary disposition of this matter, and the Trial Court properly determined that the Andersen Defendants were entitled to judgment as a matter of law. Summary judgment is not precluded "simply whenever some fact remains in dispute, but only when a material fact is genuinely controverted." *Heglar Ranch, Inc. v. Stillman,* 619 P.2d 1390 (Utah 1980). Further, "bare contentions, unsupported by any specification of facts in support thereof, raise no material questions of fact as will preclude the entry of summary judgment." *Johnson v. Gold's Gym*, 2009 UT App 76, ¶ 26, 206 P.3d 302 (quoting *Massey v. Utah Power & Light*, 609 P.2d 937, 938 (Utah 1980); *see also Dairy Prod. Servs. v. City of Wellsville*, 2000 UT 81, ¶ 54, 13 P.3d 581 (determining that reliance upon "unsubstantiated opinions and conclusions is insufficient to create an issue of fact").

In Pioneer's Brief, it asserts there are three genuine issues of material fact that "precluded summary judgment" or made the grant of summary judgment by the Trial Court in favor of the Andersen Defendants "inappropriate": first, the "existence of the purported improvements" on the Property; second, Ralph Call's actual knowledge of the improvements; and, third, Pioneer's access to and review of the appraisal report.

A. It is an undisputed fact that substantial and material improvements were made to the Property by the Andersen Defendants and the extent of such improvements are not material to the Trial Court's decision.

It is undisputed that the Andersen Defendants made improvements to the Property. The following are some of the findings/"undisputed facts" made by the Trial Court as related to improvements made by the Andersen Defendants (and other defendants):

> 18. Prior to the recording of the Pioneer Trust Deed which pledges the property in which most of these Defendants claim an interest [Parcel -025], Defendants were in possession of and made improvements on their leased property, including concrete pads, fences, posts, parking, gravel driveways, power meters, planted trees, flowers and gardens, sprinkler systems, lawns, landscaping, patio furniture, a fire pit, family signs, among others. There were individual Utah Power and Light meters to each lot and recreational vehicles parked on the leased properties.

See Initial Decision at R. 4373, attached as Addendum 1 to Appellant's Addendum. This finding/undisputed fact was based on sworn affidavits from each of the Andersen Defendants as to the nature and extent of the improvements that were placed on the Property by the Andersen Defendants and the use of the Property by the Andersen Defendants. *See* Andersen Defendant Affidavits at R. 3517-3589 (the "Andersen Defendants' Affidavits).

Pioneer would have this Court rely on the October 2006 Affidavit of Ralph Call (*see* R. at 4248-4251, attached as Addendum 15 to Appellant's Addendum) to reverse the Trial Court's decision because Pioneer contends the above-cited finding/undisputed fact is material and is disputed. However, in his October 2006 Affidavit, Ralph Call does not dispute any of the contents of the Andersen Defendants' Affidavits, but rather simply states that there was "snow on the ground" when he visited the Property and that he "did not see or notice" any improvements besides parked camper trailers, concrete slabs, a lodge, and some roads. *See*

October 2006 Affidavit of Ralph Call at R. 4250, Appellant's Addendum, Tab 15. Other than the "bare contention" that he "did not see or notice" the improvements made by the Andersen Defendants, as sworn to in Affidavits by the Andersen Defendants, neither Ralph Call nor Pioneer further address the contents of the Andersen Defendants' Affidavits or dispute that the improvements were made and readily visible. Ralph Call not seeing or noticing the improvements is not sufficient to raise a question of fact that would preclude summary judgment. Even if construed to be a disputed fact, the extent of the improvements, in addition to those "noticed" by Ralph Call, is not material, as the Trial Court did not rely on it nor did it affect the Trial Court's ultimate decision.

B. The Trial Court's decision to grant the Andersen Defendants summary judgment was based, in part, on the undisputed fact that Pioneer visited the Property and had actual knowledge of improvements made to the Property by the Andersen Defendants.

Despite Pioneer's attempt to make this Court believe otherwise, it is acknowledged by Pioneer that it had actual knowledge of at least some of the Andersen Defendants' improvements made to the Property. Among other things, actual notice of the improvements made to the Property and possession of the Property by the Andersen Defendants prevent Pioneer from being a good faith purchaser of the Property under the recording statute.

The Trial Court, in reliance on the Andersen Defendants' affidavits, found that various and certain improvements had been made to the Property. (*See* Initial Decision at R. 4368-4381, Appellant's Addendum at Tab 1.) Specifically, the court found that it was undisputed that the Andersen Defendants made improvements "including concrete pads, fences, posts, parking, gravel driveways, power meters, planted trees, flowers and gardens,

sprinkler systems, lawns, landscaping, patio furniture, a fire pit, family signs, among others." R. at 4373. Further, the court found that even though Pioneer disputed any actual notice of the claimed improvements, Pioneer had sufficient admitted actual knowledge of the improvements to put it on actual and constructive notice of the Andersen Defendants' claims in and to the Property. The Trial Court stated as follows:

> Plaintiff disputes that it had inquiry notice of the existence of the purported improvements and disputes any actual knowledge of these claimed improvements. Ralph Call (President of Pioneer) visited the site in April of 2001 (a time when Bear Lake is typically still cold and few, if any, recreational activities are occurring) and saw improvements. (Finding #21.[9]) Even with the improvements indicated in Mr. Call's affidavit, a reasonable person would have been put on guard and inquired further into the improvements, especially if one had a trust deed for over 1.5 million dollars that would be jeopardized if it was junior to any other interest. Plaintiff either failed or refused to make any inquiry. (Finding #20[10].) Plaintiff knew lots existed and could simply check membership records or even count the "unsold lots" from the total platted to determine if the improvements were on lots that had been *recorded* or not. If it was determined that some of the lots had not been recorded then it would seem that a reasonable person would inquire to see if the lots had been *sold/leased.*

Initial Decision, R. at 4381-4382 (emphasis added).

Therefore, even if Pioneer's actual knowledge of the extent of the improvements made to the Property by the Andersen Defendants was disputed, as argued by Pioneer, it is undisputed that Pioneer had actual knowledge of at least a portion of the improvements made. Ralph Call's October 2006 Affidavit, as quoted above, establishes as an undisputed

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9 Finding #21 states "In approximately April of 2001, Ralph Call and Steve Baugh personally visited the property, giving Pioneer actual knowledge of the Defendants' uses and improvements of the property to the extent these were visible." Initial Decision, R. at 4373.

10 Finding #20 states "Pioneer did not inquire as to the Defendants' possible interests in the property." Initial Decision, R. at 4373.

fact that he had actual knowledge of some of the improvements made to the Property by the Andersen Defendants. This admitted actual knowledge shows Pioneer had actual knowledge of at least some of the improvements. (R. at 4250.) This admission by Ralph Call is, in part, what the Trial Court relied on in determining Pioneer had actual knowledge of the interests and putting Pioneer on inquiry notice.

Whether or not there were other improvements on the Property made by the Andersen Defendants that Ralph Call did not see on his visit was immaterial to the Trial Court's ultimate decision to grant the Andersen Defendants summary judgment.[11] Therefore, because Pioneer does not dispute that it had actual knowledge of improvements made to the Property by the Andersen Defendants (See 2006 Affidavit of Ralph Call, R. at 4250), and because the Trial Court only relied on "Defendants' uses and improvements of the property to the extent they were visible" during Ralph Call's 2001 visit to the Property (See R. at 4373, 4381-4382) to determine Pioneer had actual knowledge of the improvements, there remains no dispute as to a material fact creating a factual issue that would preclude summary judgment in favor of the Andersen Defendants by the Trial Court.

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11 In Pioneer's Brief at 36, it misstates, understandably without citation to the record, "the District Court ruled that Ralph Call, president of Pioneer, had actual knowledge of those claimed improvements [storage sheds, fire pits, rock walls, stairs, fences, landscaping, lawns, flowers, trees, gardens, family signs, patio furniture, sprinklers, water hookups, utility meters, cement pads, gravel driveways, parked RVs, etc.]". However, the court made no such ruling and did not find it material as to whether Ralph Call had actual knowledge of all of these improvements. The court simply held Pioneer had actual knowledge of the improvements to the extent they were visible when [Ralph] Call visited the property, and stated "with the improvements indicated in Ralph Call's affidavit, a reasonable person would have been put on guard and inquired further into the improvements...." (R. at 4381).

In short, even if it is a dispute of fact whether Pioneer had actual knowledge of the extent of the improvements made to the Property by the Andersen Defendants, such is not material to the Trial Court's decision; the Trial Court's inclusion of such in its discussion is not reversible error. The Trial Court makes this point as follows: "Though the extent of the improvements are disputed between the parties, all parties involved agree that there were improvements made. Even the minimal improvements Mr. Call states he observed would put a reasonable person on guard so as to require further inquiry on his part." Initial Decision, R. at 4383.

C. It is undisputed that Pioneer's principal, Ralph Call, received the Yarrington Appraisal before Pioneer's loan was made that encumbered Parcel -025.

Pioneer, in its Brief of Appellant at 37, without basis, explanation, or citation to the record avers that the "District Court also relied heavily for its inquiry notice ruling on the claim that Pioneer's principal, Ralph Call, had received and read a certain appraisal report pertaining to the Property before Pioneer made any of its loans that are the subject of this case." While the Trial Court likely did consider the appraisal report as one of a myriad of factors in concluding that Pioneer had actual and constructive notice of the Andersen Defendants' property interests in the Property, it clearly was not the critical, sole, or determinative factor for any of the Trial Court's conclusions. Thus, any dispute regarding the appraisal report, especially as to whether Ralph Call actually read the report,[12] is not material

12 Contrary to Pioneer's position, the Trial Court did not rely at all in making its decision on Ralph Call reading the appraisal. In fact, the decision does not even contemplate Ralph Call reading the appraisal. Rather, the Trial Court stated Call (and Pioneer) had "access to an appraisal" and that having access to such appraisal and not reading it would be "akin to

and not reversible error. *See Heglar Ranch, Inc.*, 619 P.2d at 1391 (summary judgment is not precluded "simply whenever some fact remains in dispute, but only when a material fact is genuinely controverted").

Regarding the Appraisal, the Trial Court held, in its entirety, "Plaintiff had access to an appraisal on the property which identified many of the leased lots." Initial Decision, R. at 4382. It continued, "[Pioneer]'s failure to review the property appraisal on land securing a one and a half million dollar loan seems akin to intentionally donning blinders." *Id.* at 4383. The Trial Court also found that "Prior to Pioneer's recording of its trust deed, Pioneer had access to an appraisal prepared by Dennis Yarrington that identified many of the leased properties (lots) ranging from Lot #3 to Lot #52, including information that leases were sold as late as October of 2000." R. at 4372.

While Pioneer would have this Court believe that the Trial Court placed great emphasis on Pioneer's "receipt and review of the referenced appraisal report and related information" (*see* Brief of Appellant at 37), the fact of the matter is that the Trial Court only placed emphasis on the fact that the appraisal report was available to Pioneer for receipt and review. Never did the Trial Court intimate that Pioneer actually received or reviewed the appraisal report. It was Pioneer's own claims and affidavits that established Ralph Call had in fact received the appraisal report and information contained therein. (*Id.*)

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intentionally donning blinders." R. at 4372, 4383.

Given the foregoing and the admissions and testimony of Pioneer, it is undisputed that Pioneer had access to the appraisal before making any loans that encumbered lot -025. In the October 2006 Affidavit of Ralph Call, he states as follows:

> With regard to the appraisal report that is Exhibit 27 to the Andersen Parties' Memorandum ..., I did not, in my individual capacity nor in my capacity for or on behalf of Pioneer, commission, request, authorize, Baugh to order or commission, nor did I know that Baugh had ordered or commissioned, that appraisal report. While I may have seen a paper showing an appraised value, I did not receive or see any other portion of that appraisal report until sometime after December 29, 2000.

R. at 4250 (emphasis added); (*see also* Excerpts of the Yarrington Appraisal, including the two-page summary referred to by Ralph Call, Andersen Defendants' Summary Judgment Reply Memorandum at Exhibit 27, R. at 3498-3509; Complete Yarrington Appraisal, R. at 3757-3826.)

A lender must be deemed to know that a two-page summary of an appraisal is just that, a summary, and a prudent lender would request the full appraisal report before proceeding. Thus, even if this is a material fact, it is undisputed that Pioneer had knowledge of and access to the Yarrington Appraisal before lending additional money to Pine Ridge on or about August 14, 2001 (Pioneer loaned an additional amount of approximately $710,000, thereby increasing the amount due under Pioneer's notes in excess of $1.5 million), the loan that encumbered Parcel -025. The Yarrington Appraisal clearly identified all Andersen Defendants' leasehold and undivided interests in the Property (R. at 3822 (Map included in Yarrington Appraisal identifying each Andersen Defendant Lot as "sold")), and expressly

identified and used five of the Andersen Defendants' Lots as comparables (R. at 3796-3797, 3799-3801.)

IV. THE TRIAL COURT LEAVING OUT THE PHRASE "OF RECORD" WHEN QUOTING THE PIONEER TRUST DEED'S "SUBJECT TO" CLAUSE IN ITS JANUARY 2009 JUDGMENT IS IMMATERIAL

Pioneer is correct in its assertion that the January 2009 Judgment, in reference to the Pioneer's various trust deeds' "subject to" clauses, fails to completely cite the "subject to" clauses of the various trust deeds and, specifically, fails to cite the final portion of the "subject to" clauses which includes the phrase "of record." However, Pioneer correctly cites, but mischaracterizes the content of the Trial Court's January 2009 Judgment.

The 2009 Judgment and Order states, "[Pioneer] obtained its trust deed interests in the Property subject to the restrictions appearing in the owners' warranty deed restrictions, including making the interests 'subject to all ... easements, agreements, memberships, [and] leases.'" (paragraph 13.d., R. at 4912) (emphasis added). As is clear from the emphasized section above, Pioneer's interests in the Property are subject to the restrictions appearing in the owners' warranty deed plain and simple, including any restrictions pertaining to items "of record." The clause following the emphasized section, and of which Pioneer complains, is not one of exclusivity attempting to nullify provisions of the deeds on which Pioneer's interests are subject, but a partial mention of the deeds' "subject to" contents.

Further, and as stated by Pioneer in its footnote number 4, the Trial Court accurately and completely cited the language of "subject to" clause in its Initial Decision, upon which the 2009 Judgment and Order was based. This should more than sufficiently clear up any

confusion and dispel any thought that the Trial Court was trying to undermine the contents of the "subject to" clauses in an apparent attempt to justify its decision, as is implied by Pioneer.

Finally, the phrase "of record" only applies to the last item in the list (i.e., "rights of way of record"). The phrase does not apply to each and every item in the list, as such would be illogical because items on the list, such as canals and memberships, are often not interests that are made "of record."

Regardless, the omission by the Trial Court of the "of record" portion of the "subject to" clauses is immaterial. The 2009 Judgment sufficiently provides that Pioneer obtained its trust deed interests in the Property subject to the owner's warranty deed restrictions (without placing limitations on said warranty deed restrictions) which does include the phrase "of record." This is not an issue that is of dispute by any party or by the Trial Court, and further such omission in the 2009 Judgment has no import as to the issues before this Court.

V. WHETHER PIONEER EFFECTIVELY ENCUMBERED PARCEL -025 AS OF AUGUST 14, 2001, OR A LATER DATE, IS INAPPLICABLE TO AND IRRELEVANT TO THE GROUNDS UPON WHICH THE TRIAL COURT GRANTED THE ANDERSEN DEFENDANTS SUMMARY JUDGMENT

Because every Andersen Defendant, as defined herein, acquired their interest in and to the Property before the First Pioneer Trust Deed was recorded on November 17, 2000, and before Pioneer recorded its Modified Trust Deed on August 14, 2001 (the date on which Pioneer argues it effectively encumbered Parcel -025), the Trial Court's determination of the legal effect of Pioneer's Modified Trust Deed, Pioneer's Supplemental Trust Deed, the Corrective Affidavit, and the Settlement Deed, and the date upon which these documents

effectively encumbered Parcel -025, are irrelevant and inapplicable to the Trial Court's summary judgment in favor of the Andersen Defendants.[13]

The Charts attached as Addendum, Tab 3 and Addendum, Tab 4, show each Andersen Defendant, each lot number they have an interest in, and their original dates of purchase. The information in these charts is undisputed and shows that each and every Andersen Defendant acquired their interest in the Property prior to Pioneer's recording of the First Pioneer Trust Deed on November 17, 2000, and prior to Pioneer's recording of the Amended Pioneer Trust Deeds on August 14, 2001 attempting to include Parcel -025.

The Trial Court based the Andersen Defendants' priority, in part, on this fact, and on the fact that Pioneer was on actual notice, constructive record notice, and constructive inquiry notice, as of the dates it recorded the Pioneer Trust Deeds. Regarding inquiry notice, and as stated by the Trial Court, "[Pioneer] knew of improvements on the Property and was on inquiry notice up until [Pioneer] filed its trust deed in August of 2001... [U]ltimately [Pioneer] was on inquiry notice at least from the time of its April 2001 visit up until it filed its trust deed." Initial Decision, R. at 4382 (emphasis added). All Andersen Defendants having interests in Parcel -025 acquired their interests in Parcel -025 prior to the August 2001 recording of the Amended Pioneer Trust Deeds. Therefore, whether or not Pioneer

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13 This issue, and the discussion of this issue in the Trial Court's Initial Decision, is focused on and applicable to some or all of the Budd Defendants and those Defendants labeled as "Group B Defendants" in the Trial Court's Initial Decision. This issue may also be applicable to some of the Andersen Defendants in the event this Court does not uphold the reasoning behind the Trial Court's Initial Decision relating to the Andersen Defendants.

effectively encumbered Parcel -025 as of August 14, 2001, or a later date, is of no import to the Andersen Defendants given the Trial Court's decision.[14]

VI. PIONEER WAS ON RECORD NOTICE OF MANY OF THE ANDERSEN DEFENDANTS' INTERESTS IN THE PROPERTY PRIOR TO ITS FILING OF THE CORRECTIVE AFFIDAVIT AND SETTLEMENT QUIT CLAIM DEED

Although the Trial Court granted the Andersen Defendants summary judgment without giving regard to the date Pioneer effectively encumbered Parcel -025, if this Court agrees with the Trial Court and finds in favor of the Budd Defendants, many of the Andersen Defendants would prevail on the same alternative basis.

On September 24, 2002, Lauren Nalder, a title company employee, attempted to retroactively add Parcel -025 to a previously filed warranty deed between KDA, grantor, and Pine Ridge, grantee, by Affidavit ("Nalder Affidavit"). This attempt was necessary because Pioneer took a trust deed on Parcel -025 from Pine Ridge in 2001, but at that time, Pine Ridge was not record owner of Parcel -025, and thus could not transfer an interest in Parcel -025 to Pioneer. The Trial Court determined that the Nalder Affidavit was a nullity and did not establish priority for Pioneer in Parcel -025 relating back to the date of filing the Amended Pioneer Trust Deeds. (*See* 2009 Judgment at 9, R. at 4912 ("The Nalder Affidavit ... is a nullity, is not retroactive, and does not meet the requirements of § 57-3-106(8) UCA").) Because the Nalder Affidavit was deemed a nullity, Pine Ridge did not obtain

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14 The Andersen Defendants, for the reasons stated in its Andersen Defendants' Summary Judgment Reply Memorandum, are of the position that Parcel -025 was not validly conveyed to Pioneer until 2005, and therefore, any Andersen Defendant having an interest in Parcel -025 who recorded their interest prior to 2005, has another basis to succeed on constructive

record title to Parcel -025 until the Settlement Deed was recorded on March 14, 2005, and likewise, Pioneer did not obtain an interest in Parcel -025 until said date.

Attached hereto as Addendum, Tab 7 is a table showing each Andersen Defendant who recorded its interest in the Property prior to the date Pioneer effectively encumbered Parcel -025 (March 14, 2005). Because these Andersen Defendants recorded prior to Pioneer's encumbrance of Parcel -025, Pioneer was on constructive record notice of the interests, and Pioneer's interests in Parcel -025 should be subordinate to any such Andersen Defendant interests (insofar as they are on Parcel -025) recorded prior to March 14, 2005.

VII. BECAUSE NONE OF THE ANDERSEN DEFENDANTS ARE CLAIMANTS TO "PAYMENT LOTS" OR "PAYMENT DEFENDANTS," PIONEER'S ISSUE RELATING TO THE PAYMENT LOTS IS INAPPLICABLE TO THE ANDERSEN DEFENDANTS

In responding to a Proposed Order, Pioneer objected to, and the Trial Court took under advisement, the paragraphs and provisions of the Proposed Order that established, or purported to establish, any priority of the claimed interests of Lot Nos. 8, 9, 12, 13, and 49 ("Payment Lots"), due to Pioneer's contentions that the owners/interest holders of these lots ("Payment Defendants") had failed to pay in full on his and/or her property in contravention of their express agreements. See March 20, 2008 Memorandum Decision, R. at 4779. However, because this issue was never raised with respect to any Andersen Defendant and no Andersen Defendant has any claims to the above-cited lot numbers, this issue is inapplicable to the Andersen Defendants, and should not preclude summary judgment in their favor.

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record notice theory. *See* Argument VI.

VIII. THE ANDERSEN DEFENDANTS OFFERED EVIDENCE OF PIONEER'S TITLE INSURANCE POLICY AS EVIDENCE THAT PIONEER HAD CONSTRUCTIVE NOTICE OF THE RECORDED LEASES

This Court should not reverse the Trial Court's Decision based on the fact it was brought to light at the Trial Court level that Pioneer had a title insurance policy that it admittedly obtained. The Andersen Defendants referenced Pioneer's title insurance policy not to show an alternative source of payment for damages, but rather to show that Pioneer did have constructive notice of the recorded leases as reflected in the title commitment. *See* Andersen Defendants' Summary Judgment Reply Memorandum, R. at 3650. The purpose for which the title commitment is referenced by the Andersen Defendants is knowledge. Thus, Pioneer has completely misapplied the collateral source rule and, further, Pioneer will suffer no prejudice from the inclusion of this reference, as the reference made to the title commitment by the Andersen Defendants at the Trial Court level makes no suggestion that any insurance company should or will be available to indemnify Pioneer for any losses.

IX. PIONEER IS NOT ENTITLED TO AN AWARD OF ITS ATTORNEYS' FEES AND COSTS INCURRED ON THIS APPEAL

Pioneer argues it is entitled to recover its attorneys' fees and costs on appeal via provisions located in the promissory notes for which Pioneer's Trust Deeds serve as security. However, none of the Andersen Defendants were parties to the referenced promissory notes and/or trust deeds, nor otherwise in privity of contract with Pioneer, and therefore are not subject to the provisions of the promissory notes and/or trust deeds. There is no contractual basis between Pioneer and the Andersen Defendants for an award of attorneys' fees, and Pioneer has not provided a statute entitling them to attorneys' fees. *Ault v. Holden*, 2002 UT

33, ¶46 ("[i]n Utah, attorney fees are typically awarded only pursuant to statute or contract"). Pioneer is not entitled to an award of attorneys' fees or costs incurred on this appeal from the Andersen Defendants.

CONCLUSION

In light of the foregoing, this Court should uphold the Trial Court's order of summary judgment in favor of the Andersen Defendants. The Trial Court correctly determined that the Andersen Defendants' interests in the Property, and in each of the Andersen Defendants' respective Lots, are superior to and of higher priority than Pioneer's interests in the Property. This Court should affirm the Trial Court's judgment.

DATED this 28 day of July, 2011

OLSON & HOGGAN, P.C.

Miles P. Jensen

Miles P. Jensen
Attorneys for Defendants/Appellees
(Andersen Defendants)

CERTIFICATE OF DELIVERY AND MAILING

I hereby certify that on this 28 day of July, 2011, I caused to be delivered one original and nine copies of the foregoing **ANDERSEN DEFENDANTS' BRIEF OF APPELLEE**, to the Supreme Court of Utah, and mailed, postage prepaid by first-class mail, two true and correct copies of the foregoing **ANDERSEN DEFENDANTS' BRIEF OF APPELLEE**, to the following:

Bradley L. Tilt
FABIAN & CLENDENIN, P.C.
215 South State, Suite 1200
Salt Lake City, UT 84111-2323
Attorneys for the Plaintiff

Brent W. Wamsley
WAMSLEY & ASSOCIATES, L.C.
4360 South Redwood Road, Suite 1
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Attorneys for Boyd Smith and Carolyn Smith

Gary N. Andersen
Brian G. Cannell
HILLYARD, ANDERSEN & OLSEN, P.C.
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Attorneys for Advanced Title Insurance Agency, LC

Larry and Karen Call
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Ogden, UT 84414

Ronald Hunter, Kay Hunter,
Daniel Hunter, and Randall Hunter
8723 Oakwood Park Circle
Sandy, UT 84094

Brent and Ginger Rhees
3772 North 3900 West
Plain City, UT 84404

Michael S. Budd and Trudi L. Budd
6141 West 13900 South
Riverton, UT 84065

Robert D. Gonzales and Sheri D. Gonzales
5960 South Tressler Road
Kearns, UT 84118

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N-9983

Tab 1

ADDENDUM NO. 1

Representative Leases, Right of Way Grants, and Purchase Contract

(*See also* R. at 3269-3441 for the remaining Anderson Defendants' documents)

THE K.D.A. CORPORATION

SUNRISE VILLAGE II R.V. PARK

BEAR LAKE

"THIS IS A LEGALLY BINDING CONTRACT, IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE."

LEASE

The **K.D.A. CORPORATION** of Logan, Utah, County of Cache, State of Utah, hereinafter referred to as the Lessor, hereby leases to DALE RIDD AND/OR MARTA RIDD, State of UTAH hereinafter referred to as the Lessee on that certain site located on **SUNRISE VILLAGE II R.V. PARK, SITE NUMBER 2** and more particularly described as follows, to wit:

See attached for the legal description which by this reference is made a part hereof.

This lease is for a period of 50 years from 11/1/98 thru 11/1/2048.

Lessee will recognize other Lessees rights and agrees not to do anything to adversely affect them.

Said Lease is also subject to the following: 1) Articles of incorporation of SUNRISE VILLAGE MEMBERS ASSOCIATION, INC. 2) By-Laws SUNRISE VILLAGE MEMBERS ASSOCIATION, INC. 3) Regulations of SUNRISE VILLAGE RECREATIONAL VILLAGE PARK 4) All other regulations that may come forth by virtue of the powers stipulated in the above mentioned documents 5) Lease Agreement.

Site to be cut in as owners needs require, water and power to be installed by developers.

Grantee: DALE RIDD AND/OR MARTA RIDD
Address: P.O. BOX 901480 SANDY, UT

THIS DOCUMENT HAS BEEN PREPARED BY NORTHERN TITLE COMPANY AS AN ACCOMMODATION ONLY, WITHOUT ANY EXAMINATION WITH REGARD TO TITLE OR ITS LEGAL EFFECT.

Dated: 11/1/98

K.D.A. CORPORATION

BY: Alison H Bodily
ALISON H. BODILY, PRESIDENT

State of Utah }
County of Cache } ss.

On the 1st day of November, 1998, personally appeared before me ALISON H. BODILY who being duly sworn did say, that he, the said ALISON H. BODILY is the PRESIDENT of K.D.A. CORPORATION, and that the within the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said ALISON H. BODILY duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Notary Public

Notary Public
DACEI HOGGAN
64 East Center
Logan, Utah 84321
My Commission Expires
February 4, 2002
State of Utah

Recorded NOV 2 9 2003 Filing No. 60619
At 1:13 AM/PM In Book P9 Page D42
Fee 14.00 Debra L. Ames Rich County Recorder
Requested by Dale Ridd

PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST OF THE SALT LAKE BASE AND MERIDIAN, ALSO BEING LOCATED IN THE NORTH ONE-HALF OF LOT 4, SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST.

TOGETHER WITH RIGHT OF USE OF COMMON AREAS AND RIGHT OF WAY FOR ACCESS AND UTILITIES OVER A 30 FOOT WIDE ROAD WAY FROM THE STATE ROAD TO THE SITE.

SAID SITE 2 BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS NORTH 13 FEET AND WEST 413.56 FEET FROM THE NORTHEAST CORNER OF THE UTAH STATE PARKS AND RECREATIONS PROPERTY AS RECORDED IN THE RICH COUNTY RECORDER'S OFFICE ON 6/4/71 IN BOOK F-2, PAGE 702, SAID POINT BEING NORTH 620.53 FEET AND EAST 2617.304 FEET FROM THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 8 (BY RECORD) AND RUNNING THENCE NORTH 47*52'40" EAST 96.20 FEET, THENCE SOUTH 85*39'38" WEST 83.66 FEET, THENCE SOUTH 23*23'01" WEST 62.21 FEET, THENCE SOUTH 88*18' 06" EAST 36.78 FEET TO THE POINT OFBEGINNING.

THE K.D.A. CORPORATION

SUNRISE VILLAGE II R.V. PARK

BEAR LAKE

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Lessee will recognize other Lessees rights and agrees not to do anything to adversely affect them.

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Site to be cut in as owners needs require, water and power to be installed by developers.

Grantee: DALE RIDD AND/OR MARTA RIDD
Address: P.O. BOX 901480 SANDY, UT

THIS DOCUMENT HAS BEEN PREPARED BY NORTHERN TITLE COMPANY AS AN ACCOMMODATION ONLY, WITHOUT ANY EXAMINATION WITH REGARD TO TITLE OR ITS LEGAL EFFECT.

Dated: 11/1/98

K.D.A. CORPORATION

BY: Alison H Bodily
ALISON H. BODILY, PRESIDENT

State of Utah }
County of Cache } ss.

On the 1st day of November, 1998, personally appeared before me ALISON H. BODILY who being duly sworn did say, that he, the said ALISON H. BODILY is the PRESIDENT of K.D.A. CORPORATION, and that the within the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said ALISON H. BODILY duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Notary Public
DACEI HOGGAN
64 East Center
Logan, Utah 84321
My Commission Expires
February 4, 2002
State of Utah

Dacei Hoggan
Notary Public

Recorded JAN 29 2005 Filing No. 60621
At 1:15 AM/PM in Book P9 Page 046
Fee 14.00 Debra L. Ames Rich County Recorder
Requested by Dale Ridd

PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST OF THE SALT LAKE BASE AND MERIDIAN, ALSO BEING LOCATED IN THE NORTH ONE-HALF OF LOT 4, SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST.

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THE K.D.A. CORPORATION

SUNRISE VILLAGE II R.V. PARK

BEAR LAKE

RIGHT OF WAY GRANT DEED

K.D.A. CORPORATION, grantor hereby grants a perpetual right of way to DALE RIDD AND/OR MARTA RIDD, grantee, for ingress and egress to an existing **SUNRISE VILLAGE R.V. PARK** as located within the boundaries of Rich County, Utah, for a period of 50 years from the date of this document from 11/1/98 to 11/1/2048.

See attached for the legal description which by this reference is made a part hereof.

Said right of way shall extend across grantors land and shall connect to the state highway.

Said right of way shall also include the right to use and maintain utilities as they are available.

THIS DOCUMENT HAS BEEN PREPARED BY NORTHERN TITLE COMPANY AS AN ACCOMMODATION ONLY, WITHOUT ANY EXAMINATION WITH REGARD TO TITLE OR ITS LEGAL EFFECT.

Dated: 11/1/98

K.D.A. CORPORATION

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Dacei Hoggan

Notary Public

Notary Public
DACEI HOGGAN
64 East Center
Logan, Utah 84321
My Commission Expires
February 4, 2002
State of Utah

Recorded JAN 29 2002 Filing No. 60620
At 1:14 AM/PM In Book P9 Page 044
Fee 14.00 Debra L. Ames Rich County Recorder
Requested by Dale Ridd

PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST OF THE SALT LAKE BASE AND MERIDIAN, ALSO BEING LOCATED IN THE NORTH ONE-HALF OF LOT 4, SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST.

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THE K.D.A. CORPORATION

SUNRISE VILLAGE II R.V. PARK

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Notary Public

Notary Public
DACEI HOGGAN
64 East Center
Logan, Utah 84321
My Commission Expires
February 4, 2002
State of Utah

Recorded JAN 29 1999 Filing No. 66622
At 1:16 AM/PM In Book 89 Page 048
Fee 14.00 Debra L. Amee Rich County Recorder
Requested by Dale Ridd

PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST OF THE SALT LAKE BASE AND MERIDIAN, ALSO BEING LOCATED IN THE NORTH ONE-HALF OF LOT 4, SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST.

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PURCHASE CONTRACT II

Sunrise Village, R.V. Park
• • K D A Corporation • •

Original

THIS CONTRACT is made and entered into this 26th day of July, 1997, by and between K D A CORP., a Utah corporation hereinafter referred to as the "Seller," and DALE AND MARTA RIDD whose address is _____ hereinafter referred to as "Buyer."

(Note: Whenever used herein, the singular shall include the plural, and the use of gender shall include both genders as the context may require.)

In consideration of the mutual terms, covenants, and conditions contained herein, the parties hereto do herby agree as follows:

1. **SALE.** Seller herby agrees to sell to Buyer and Buyer hereby agrees to lease from Seller an R.V. site in SUNRISE VILLAGE, a recreational vehicle park located in Rich County, Utah, subject to the terms, covenants, and conditions of this contract.

2. **PRICE.** The purchase price for the site shall be the sum of 31,000.00 and shall be payable in the following manner and subject to the following conditions:

(a) Initial cash deposit on _____ $ 12,000.00
(b) Additional cash deposit on _____ $ _____
(c) Other: _____ $ _____
(d) The remaining principal balance of 19,000.00 shall be payable together with interest thereon at the rate of 10 per cent per year in monthly installments of _____ towards both the principal and interest with the first monthly payment begin due on _____ and subsequent payments due on the same day of each and every month thereafter for a term of _____ until paid in full and subject to the following:

(1) Buyer shall have the right of prepayment in whole or in part at any time without penalty.
(2) Each payment made by Buyer shall be applied first to interest accruing to the date of payment and the balance to the reduction of the principal balance. Payments made in advance or in excess of the regular monthly payments shall not be applied as or in lieu of future regular installments unless specifically so designated in writing by the Buyer at the time of payment.
(3) Payments made to the K D A Corporation, 215 North 400 East, Logan, Utah 84321

SITE 2

Purchase Price 31,000.00	Disclosure Statement
A. Cash Price	
B. Less Cash Down Payment(s)	12,000.00
C. Unpaid Balance of Cash Price (Amount Financed)	N.A.
D. Plus Finance Charge	N.A.
E. Total of Payments (Line C plus D)	TWO N.A. (2) TOO YEARS
F. Deferred Payment Price (Line A plus D)	N.A.
G. Annual Percentage Rate	N.A.

3. **DEVELOPMENT.** It is understood and agreed that Seller shall develop a recreational vehicle park to be known as SUNRISE VILLAGE II with 55 recreational vehicle sites - these are private sites.

4. **TRANSFERABILITY.** Site if transferrable but not without the prior written consent of the Seller and such consent shall not be unreasonably withheld; provided, however, that no transfer can be made unless and until all contractual obligations hereunder have been fulfilled to the date of the transfer and that evidence is submitted to Seller establishing the credit status of the transferee to be acceptable.

5. **ASSOCIATION OR MEMBERS.** Buyer shall be required and entitled to become a member of SUNRISE VILLAGE MEMBERS' ASSOCIATION, INC., an incorporated non-profit association organized for the purpose of managing the affairs of the members of the park; and Buyer agrees to be bound by the articles of incorporation, by-laws, and/or regulations of said Association and acknowledges that said Association shall have the right and authority to assess members a proportionate share of costs and expenses incurred by it and it shall have the right to place liens against the membership of the buyer for such assessments.

6. **REGULATIONS.** Buyer agrees that the site acquired hereunder is subject to the regulations attached hereto as Exhibit "B"; that he is bound by such regulations; and that if Buyer is in violation of any of said regulation, Seller may, at its option, upon Buyer's failure or refusal to cease such violation, request Buyer to leave the premises and in addition there to suspend Buyers membership and all rights and privileges thereof for a period not to exceed 10 days for such violation.

7. **BUYER'S DEFAULT.** In the event of the failure of Buyer to comply with the terms of this contract or upon the failure of the Buyer to make any payment or payments when the same shall become due hereunder, whether principal, interest, or otherwise, or within 30 days thereafter, time being the essence of this contract, then Seller, at its option and in addition to any and all remedies available in law or equity, shall have the following alternative remedies;

(a) Seller shall have the right, upon the failure of the Buyer to remedy the default within five (5) days after written notice of the default and Sellers' intent to declare a forfeiture, or the elect another remedy for default to be released from all obligation to convey a membership to Buyer, and all payments which have been made to it by Buyer shall be forfeited to Seller as liquidated damages for the non-performance of this contract and in consideration for the execution of this contract; and Seller may, at its option, thereupon terminate the membership of the Buyer without legal proceeding.

(b) Seller may bring suit to recover judgment for any and all delinquent installments, including costs and attorney's fees. The exercise of this action on one or more occasions shall not prevent Seller, at its option, from exercising other remedies available to it hereunder in the event of a subsequent default of Buyer; or Seller may declare the entire unpaid principal balance remaining due and payable at once together with any interest thereon or other obligations accruing hereunder and bring suit to recover such sums and any costs including attorney's fees.

8. **SELLER'S DEFAULT.** If Seller refuses or fails to perform the terms of this contract, all deposits shall be returned to buyer upon demand, and Buyer shall not thereby waive any remedy available at law or in equity because of such default.

9. **COSTS.** Any party failing to perform this contract shall pay all expenses incurred, including attorney's fees, by the other party as the result of such failure.

10. **FULL AGREEMENT.** No agreement unless incorporated herein shall be binding upon the parties. Buyer acknowledges that he has inspected the premises and all pertinent documents before executing this contract and that he has the right to seek legal advice before doing so.

11. **CONTINUITY.** The terms, conditions and covenants contained herein shall bind and the benefits hereof insure to the parties and their heirs, assigns, personal representatives, and successors in interest.

UTAH CODE ANNOTATED SECTIONS 57-19-12 PROVIDES: "PURCHASER'S RIGHT TO CANCEL: YOU MAY CANCEL THIS AGREEMENT WITHOUT ANY CANCELLATION FEE OR OTHER PENALTY BY HAND DELIVERING OR SENDING BY CERTIFIED MAIL WRITTEN NOTICE OF CANCELATION TO: (NAME AND ADDRESS OF DEVELOPER). THE NOTICE MUST BY DELIVERED OR POST MARKED BY MIDNIGHT OF THE FIFTH CALENDAR DAY FOLLOWING THE DAY ON WHICH THE AGREEMENT IS SIGNED. IN COMPUTING THE NUMBER OF CALENDAR DAYS, THE DAY ON WHICH THE CONTRACT IS SIGNED AND LEGAL HOLIDAYS ARE NOT INCLUDED."

Signed and dated this 26th day of July, 1997

K D A CORPORATION

Received $6000.00 On the Date Seni 25th

By: K D A Corporation "Seller"

D C Ridd "Buyer"

1997 BY D.C. Ridd "Buyer"

Tab 2

ADDENDUM NO. 2

Affidavit of Layne J. Smith

(with Exhibits Showing Locations of Parcels -025 and Parcels -036)

(*See also* R. at 4784-4797, Exhibits in Packet No. 4798)

Gary N. Anderson, #0088
Brian G. Cannell, #7477
HILLYARD, ANDERSON & OLSEN, P.C.
595 South Riverwoods Parkway, Suite 100
Logan, Utah 84321
(435) 752-2610

Robert J. Dale, #0808
Bradley L. Tilt, #7649
FABIAN & CLENDENIN,
a Professional Corporation
Street Address:
215 South State Street, 12th Floor
Salt Lake City, Utah 84111
Mailing Address:
P.O. Box 510210
Salt Lake City, Utah 84151
Telephone: (801) 531-8900
Facsimile: (801) 596-2814

Attorneys for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT
CACHE COUNTY, STATE OF UTAH

PIONEER BUILDERS COMPANY OF NEVADA, INC., a Nevada corporation a/k/a PIONEER BUILDERS OF NEVADA, a Nevada corporation a/k/a PIONEER BUILDERS, a Nevada corporation, Plaintiff, v. K D A CORPORATION, a Utah corporation a/k/a KDA CORPORATION a/k/a K.D.A. CORPORATION a/k/a THE K.D.A. CORPORATION a/k/a K.D.A. CORPORATION, INC.; *et al.*, Defendants	**AFFIDAVIT OF LAYNE J. SMITH** **Civil no. 030100421LM** (and 030100033, consolidated) **Judge Ben H. Hadfield**

STATE OF UTAH)
: ss.
COUNTY OF CACHE)

I, LAYNE J. SMITH, being first duly sworn upon oath depose and state as follows:

1. I am over the age of 21, and am fully competent to testify to the matters stated herein.

2. I am a Professional Land Surveyor licensed by the State of Utah, and have been since 1998.

3. I am employed as a Professional Land Surveyor with Skyline A/E/S, Inc., a/k/a Skyline Architecture/Engineering/Surveying .

4. I have performed more than 100 surveys in Rich County, Utah, and many more in counties other than Rich County, Utah.

5. I have conducted a survey to confirm the location of the lots commonly known and referred to as site or Lot nos. 49, 50, 51, and the "Honeymoon Lot" of the Sunrise Village RV Park located in Rich County, State of Utah, including ultimately creating a survey map relating to the location of those lots. A copy of the survey map I created (the "**Smith Survey Map**") is attached hereto as Exhibit "A".

6. As a part of my survey and creation of the Smith Survey Map, I reviewed various documents, including without limitation as stated and identified in the survey narrative located in the top left-hand corner of the Smith Survey Map.

7. Attached hereto as Exhibit "B" is a copy of a document I reviewed in performing my survey and creating the Smith Survey Map, and which is referred to in the survey narrative

portion of the Smith Survey Map as the "map created of Sunrise Village and in use by the owners organization."

8. Attached hereto as Exhibit "C" is a copy of a document I reviewed in performing my survey and creating the Smith Survey Map, and which is referred to in the survey narrative portion of the Smith Survey Map as "another map which has been recorded in the county recorder's office created of Sunrise Village and in use by the owners organization."

9. Attached hereto collectively as Exhibit "D" are copies of documents I reviewed in performing my survey and creating the Smith Survey Map from which I obtained the legal descriptions for lots or sites 48 and 51.

10. Also as a part of my survey I personally viewed and inspected the properties in Rich County, Utah bearing tax identification numbers 41-08-00-036, 41-08-00-037, 41-08-00-038, and 41-08-00-025, and I supervised and oversaw a team of field technicians taking and making measurements on the ground.

11. Based upon all of the items discussed above and in the survey narrative portion of the Smith Survey Map, all of which items are ordinarily and customarily relied upon by Professional Land Surveyors, I was able to retrace the description of the property bearing Rich County tax identification number 41-08-00-036 ("**Parcel -036**") and the description of the property bearing Rich County tax identification number 41-08-00-025 ("**Parcel -025**"), and I was able to plot the location on the ground of Parcel -036 and Parcel -025.

12. Also based upon all of the items discussed above and in the survey narrative portion of the Smith Survey Map, I was able to retrace and plot the location on the ground of site

or Lot nos. 49, 50, and 51 of the Sunrise Village RV park.

13. It is my opinion and conclusion, as shown and reflected on the Smith Survey Map, that Lot nos. 49, 50, and 51 of the Sunrise Village RV Park are located on Parcel -036. Without limitation of any kind upon the foregoing, it is my opinion and conclusion, as shown and reflected on the Smith Survey Map, that Lot nos. 49, 50, and 51 of the Sunrise Village RV Park are not located within Parcel -025.

14. Based upon information presently available to me, I am unable to reach a conclusion as to the location of the "Honeymoon Lot."

DATED this 21st day of July, 2008.

Layne J. Smith

Layne J. Smith

SUBSCRIBED AND SWORN TO before me this 21 day of July, 2008, by Layne J. Smith.

Elaine J. Covert

NOTARY PUBLIC
Residing at: Logan, UT

My Commission Expires:

_____

ELAINE J. COVERT
NOTARY PUBLIC - STATE OF UTAH
126 SOUTH 300 EAST
LOGAN, UT 84321
My Comm. Exp. 11/25/2009

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **AFFIDAVIT OF LAYNE J. SMITH** was mailed by first-class mail, postage fully prepaid, this 21st day of July, 2008, to each of the following:

Robert J. Dale
Bradley L. Tilt
FABIAN & CLENDENIN, P.C.
P.O. Box 510210
Salt Lake City, Utah 84151
Attorneys for Plaintiff

N. George Daines
Kevin K. Allen
Jonathan E. Jenkins
DAINES, WYATT & ALLEN, LLP
108 North Main Street
Logan, UT 84321
Attorneys for KDA Corporation

Mark J. Williams
JONES WALDO HOLBROOK & McDONOUGH, PC
170 South Main Street, Suite 1500
Salt Lake City, Utah 84101
Attorneys for Steven G. Baugh, RE/MAX in the Valley, and RE/MAX West

D. Jason Hawkins
SNOW CHRISTENSEN & MARTINEAU
10 Exchange Place, Eleventh Floor
P.O. Box 4500
Salt Lake City, Utah 84145
Attorneys for Advanced Title Insurance Agency, L.C.

Stuart H. Schultz, Esq.
Byron G. Martin
STRONG & HANNI
3 Triad Center #500
Salt Lake City, UT 84180
Attorneys for Thor B. Roundy, P.C. and Thor Roundy

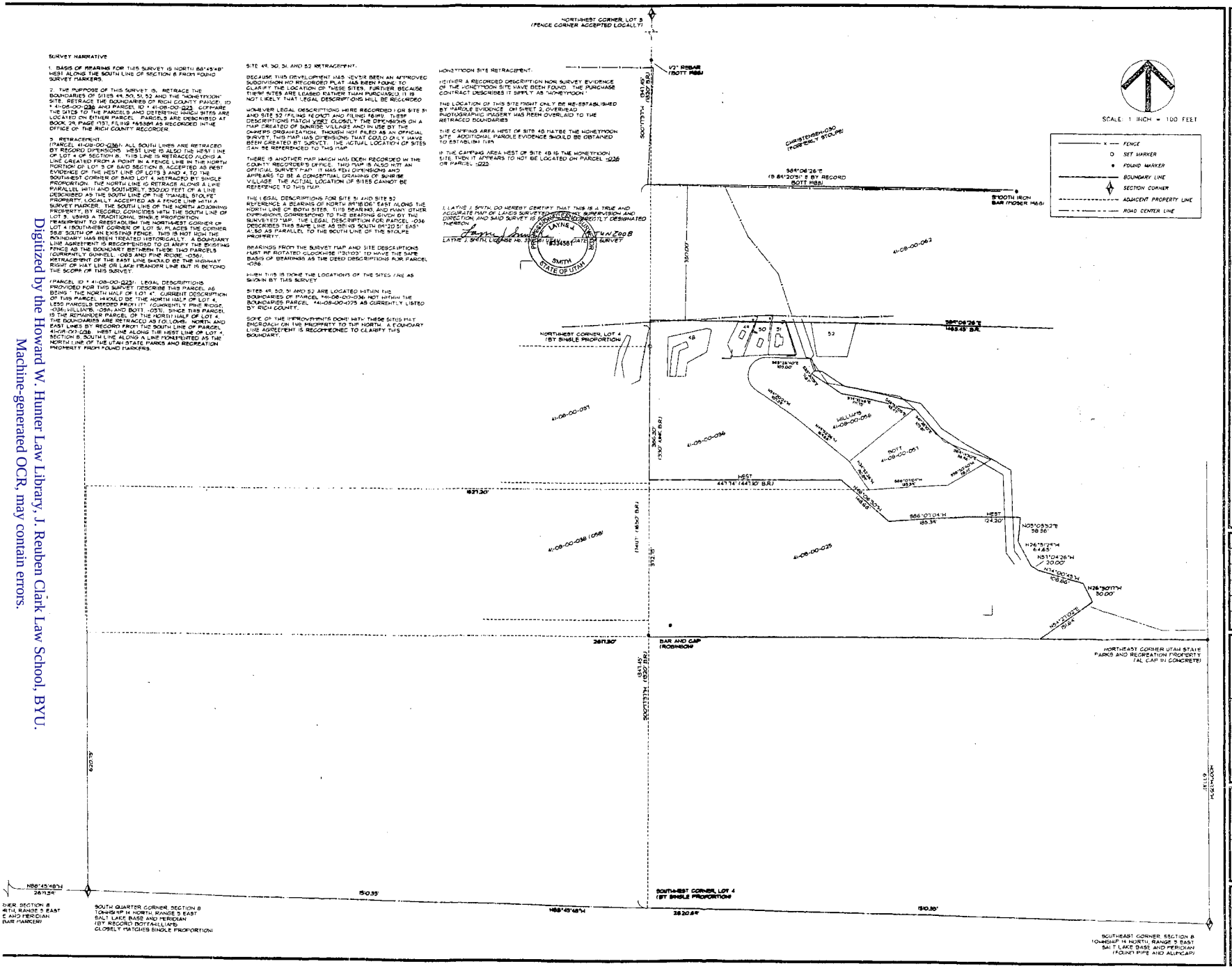
Brent K. Wamsley
Wamsley & Associates, L.C.
4360 South Redwood Road, Suite 1
Salt Lake City, Utah 84123-2204
Attorneys for Boyd Smith and Carolyn Smith

Miles P. Jensen
Kevin J. Fife
Olson & Hoggan, P.C.
130 South Main, Suite 200
PO Box 525
Logan, Utah 84321
Attorneys for Lynn C. Andersen, Larry H. Anderson, Bill Breinholt, Shawna Breinholt, Donna L. Elmquist, William R. Glaser, Laurie A. Glaser, Lenard Hanzlick, Kathryn J. Hanzlick, Harold J. Kay, Glade Larsen, Coralie Larsen, Gregory Larsen, Jerilyn Larsen, Nictree Limited Partnership, Richard Roberts, Carol Roberts, Marcel J. Schwager, Sandra S. Schwager, John D. Smidt as Trustee, Linda L. Smidt as Trustee, Dorothy Steadman, Sunrise Village Members' Association, Inc., Clint Thompson, Carolyn Thompson, Dale Ridd, Marta Ridd, Timothy J. Kendell, and Scott Hayes

Joseph M. Chambers
Harris, Preston & Chambers, PC
31 Federal Avenue
Logan, Utah 84321
Attorneys for Michael Budd and Trudi Budd, Larry Call and Karen Call, Robert Gonzales and Sheri Gonzales, Daniel Hunter, Estate of Randall Hunter, Ronald Hunter, Kay Hunter, Shyreal D. Jensen and Inge L. Jensen, Brent Rhees, Estate of Ginger Rhees, and Harlan and Renae Taylor

Peggie Wade

EXHIBIT A



SURVEY NARRATIVE

1. BASIS OF BEARINGS FOR THIS SURVEY IS NORTH 88°45'48" WEST ALONG THE SOUTH LINE OF SECTION 8 FROM FOUND SURVEY MARKERS.

2. THE PURPOSE OF THIS SURVEY IS: RETRACE THE BOUNDARIES OF SITES 49, 50, 51, 52 AND THE "HONEYMOON" SITE. RETRACE THE BOUNDARIES OF RICH COUNTY PARCEL ID # 41-08-00-0286 AND PARCEL ID # 41-08-00-0223. COMPARE THE SITES TO THE PARCELS AND DETERMINE WHICH SITES ARE LOCATED ON EITHER PARCEL. PARCELS ARE DESCRIBED AT BOOK 29, PAGE 1151, FILING #65384 AS RECORDED IN THE OFFICE OF THE RICH COUNTY RECORDER.

3. RETRACEMENT
(PARCEL 41-08-00-0286): ALL SOUTH LINES ARE RETRACED BY RECORD DIMENSIONS. WEST LINE IS ALSO THE WEST LINE OF LOT 4 OF SECTION 8. THIS LINE IS RETRACED ALONG A LINE CREATED FROM A POINT IN A FENCE LINE IN THE NORTH PORTION OF LOT 5 OF SAID SECTION 8, ACCEPTED AS BEST EVIDENCE OF THE WEST LINE OF LOT 5 3 AND 4. TO THE SOUTHWEST CORNER OF SAID LOT 4. RETRACED BY SINGLE PROPORTION. THE NORTH LINE IS RETRACE ALONG A LINE PARALLEL WITH AND SOUTHERLY, 330.00 FEET OF, A LINE DESCRIBED AS THE SOUTH LINE OF THE "HANUEL STOLPE" PROPERTY, LOCALLY ACCEPTED AS A FENCE LINE WITH A SURVEY MARKER. THE SOUTH LINE OF THE NORTH ADJOINING PROPERTY, BY RECORD, COINCIDES WITH THE SOUTH LINE OF LOT 3. USING A TRADITIONAL SINGLE PROPORTION RETRACEMENT TO REESTABLISH THE NORTHWEST CORNER OF LOT 4 (SOUTHWEST CORNER OF LOT 5), PLACES THE CORNER 58.8' SOUTH OF AN EXISTING FENCE. THIS IS NOT HOW THE BOUNDARY HAS BEEN TREATED HISTORICALLY. A BOUNDARY LINE AGREEMENT IS RECOMMENDED TO CLARIFY THE EXISTING FENCE AS THE BOUNDARY BETWEEN THESE TWO PARCELS (CURRENTLY GUNNELL -069 AND PINE RIDGE -036).
RETRACEMENT OF THE EAST LINE SHOULD BE THE HIGHWAY RIGHT OF WAY LINE OR LAKE FRONTER LINE BUT IS BEYOND THE SCOPE OF THIS SURVEY.

(PARCEL ID # 41-08-00-0223): LEGAL DESCRIPTIONS PROVIDED FOR THIS SURVEY DESCRIBE THIS PARCEL AS BEING: THE NORTH HALF OF LOT 4". CURRENT DESCRIPTION OF THIS PARCEL WOULD BE "THE NORTH HALF OF LOT 4, LESS PARCELS DEEDED FROM IT" (CURRENTLY PINE RIDGE, -036; HILLIARD, -056; AND BOTT, -057). SINCE THIS PARCEL IS THE REMAINDER PARCEL OF THE NORTH HALF OF LOT 4, THE BOUNDARIES ARE RETRACED AS TO LOWER, NORTH AND EAST LINES BY RECORD FROM THE SOUTH LINE OF PARCEL 41-08-00-0286. WEST LINE ALONG THE WEST LINE OF LOT 4, SECTION 8, SOUTH LINE ALONG A LINE MONUMENTED AS THE NORTH LINE OF THE UTAH STATE PARKS AND RECREATION PROPERTY FROM FOUND MARKERS.

SITE 49, 50, 51 AND 52 RETRACEMENT:

BECAUSE THIS DEVELOPMENT HAS NEVER BEEN AN APPROVED SUBDIVISION NO RECORDED PLAT HAS BEEN FOUND TO CLARIFY THE LOCATION OF THESE SITES. FURTHER BECAUSE THESE SITES ARE LEASED RATHER THAN PURCHASED, IT IS NOT LIKELY THAT LEGAL DESCRIPTIONS WILL BE RECORDED

WHILE VERY LEGAL DESCRIPTIONS WERE RECORDED FOR SITE 51 AND SITE 52 (FILING 16 (ONLY) AND FILING 18(P)). THESE DESCRIPTIONS PATCH VERY CLOSELY THE OPENINGS ON A MAP CREATED OF SUNRISE VILLAGE AND IN USE BY THE OWNERS ORGANIZATION. THOUGH NOT FILED AS AN OFFICIAL SURVEY, THIS MAP HAS DIMENSIONS THAT CLOSE ONLY HAVE BEEN CREATED BY SURVEY. THE ACTUAL LOCATION OF SITES CAN BE REFERENCED TO THIS MAP.

THERE IS ANOTHER MAP WHICH HAS BEEN RECORDED IN THE COUNTY RECORDER'S OFFICE. THIS MAP IS ALSO NOT AN OFFICIAL SURVEY MAP. IT HAS FEW DIMENSIONS AND APPEARS TO BE A CONCEPTUAL DRAWING OF SUNRISE VILLAGE. THE ACTUAL LOCATION OF SITES CANNOT BE REFERENCE TO THIS MAP.

THE LEGAL DESCRIPTIONS FOR SITE 51 AND SITE 52 REFERENCE A BEARING OF NORTH 84°18'06" EAST ALONG THE NORTH LINE OF BOTH SITES. THIS BEARING AND MANY OTHER DIMENSIONS CORRESPOND TO THE BEARING GIVEN BY THE SURVEYED "MAP". THE LEGAL DESCRIPTION FOR PARCEL -036 DESCRIBES THIS BASE LINE AS BEING SOUTH 89°20'51" EAST ALSO AS PARALLEL TO THE SOUTH LINE OF THE STOLPE PROPERTY.

BEARINGS FROM THE SURVEY MAP AND SITE DESCRIPTIONS MUST BE ROTATED CLOCKWISE 1°31'03" TO HAVE THE SAME BASIS OF BEARINGS AS THE DEED DESCRIPTIONS FOR PARCEL -036.

WHEN THIS IS DONE THE LOCATIONS OF THE SITES ARE AS SHOWN BY THIS SURVEY.

SITES 49, 50, 51 AND 52 ARE LOCATED WITHIN THE BOUNDARIES OF PARCEL 41-08-00-036 NOT WITHIN THE BOUNDARIES PARCEL 41-08-00-0223 AS CURRENTLY LISTED BY RICH COUNTY.

SOME OF THE IMPROVEMENTS DONE WITH THESE SITES MAY ENCROACH ON THE PROPERTY TO THE NORTH. A BOUNDARY LINE AGREEMENT IS RECOMMENDED TO CLARIFY THIS BOUNDARY.

HONEYMOON SITE RETRACEMENT:

NEITHER A RECORDED DESCRIPTION NOR SURVEY EVIDENCE OF THE HONEYMOON SITE HAVE BEEN FOUND. THE PURCHASE CONTRACT DESCRIBES IT SIMPLY AS "HONEYMOON".

THE LOCATION OF THIS SITE MIGHT ONLY BE RE-ESTABLISHED BY PAROLE EVIDENCE. ON SHEET 2, OVERHEAD PHOTOGRAPHIC IMAGERY HAS BEEN OVERLAID TO THE RETRACED BOUNDARIES.

THE CAMPING AREA WEST OF SITE 48 MAY BE THE HONEYMOON SITE. ADDITIONAL PAROLE EVIDENCE SHOULD BE OBTAINED TO ESTABLISH THIS.

IF THE CAMPING AREA WEST OF SITE 48 IS THE HONEYMOON SITE, THEN IT APPEARS TO NOT BE LOCATED ON PARCEL -036 OR PARCEL -0223.

I, LAYNE J. SMITH, DO HEREBY CERTIFY THAT THIS IS A TRUE AND ACCURATE MAP OF LANDS SURVEYED UNDER MY SUPERVISION AND DIRECTION, AND SAID SURVEY IS CORRECTLY DESIGNATED THEREON.

LAYNE J. SMITH, LICENSE NO. 334561 DATED THIS 19TH DAY OF JUNE, 2008 DATE OF SURVEY

PROFESSIONAL LAND SURVEYOR
LAYNE J. SMITH
334561
SMITH
STATE OF UTAH

No.	REVISION

Skyline A/E/S, INC
Architecture / Engineering / Surveying
93 W. Golf Course Rd. #101 Logan, UT 84321
(435) 752-8691 / Fax (435) 752-8693

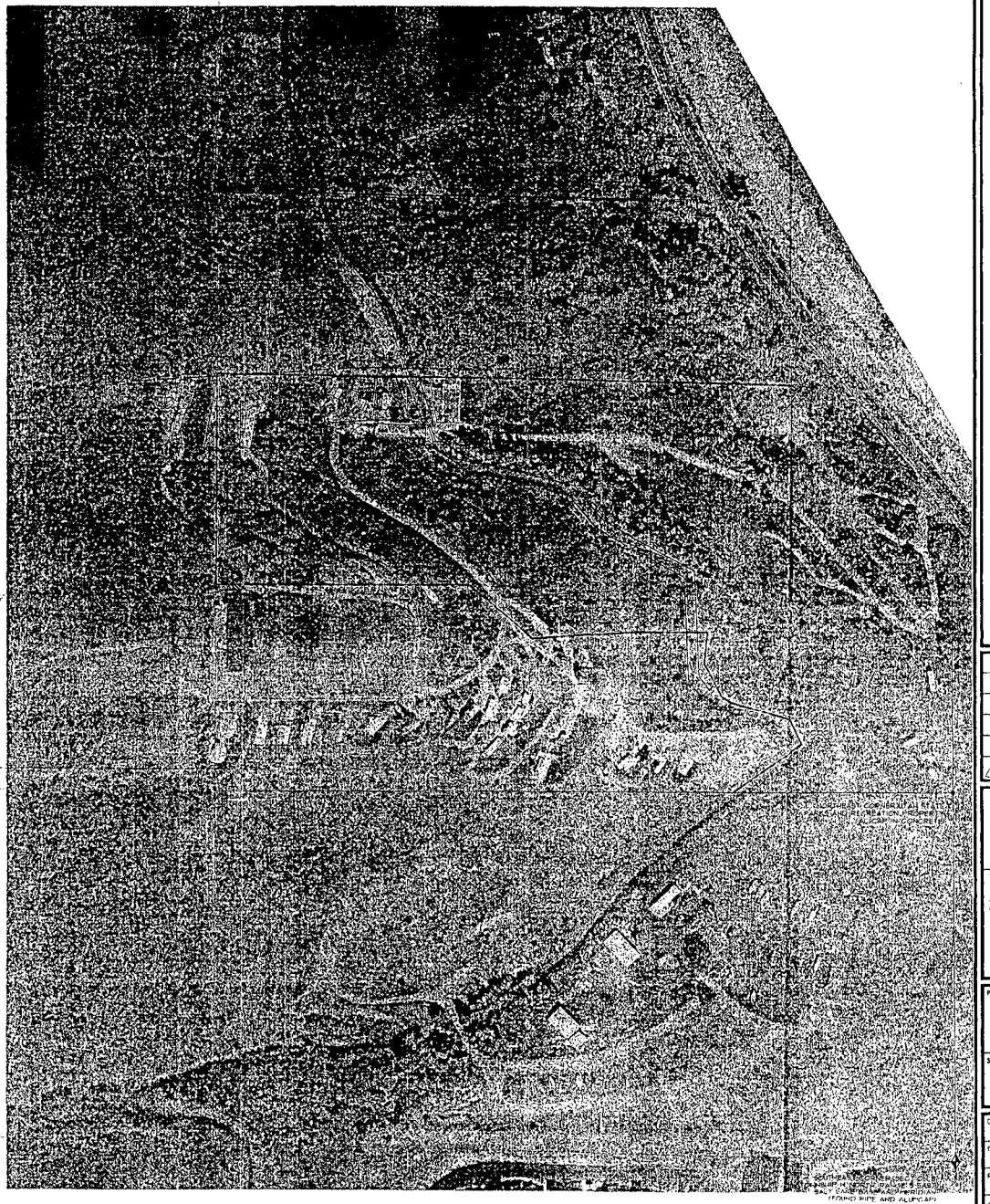
Professional Seal:

Project Title:
SUNRISE VILLAGE
UNITS 50,51,52
RICH COUNTY, UT

Sheet Title:
BOUNDARY
SURVEY

Drawn By:	Project Number:	Sheet No:
L.SMITH	08-072	
Designed By:	Date:	
	19 MAY 2008	
Reviewed By:	Sheet Scale:	
C.JOB-072		1

EXHIBIT A



SCALE: 1 INCH = 100 FEET

- x — FENCE
- SET MARKER
- FOUND MARKER
- BOUNDARY LINE
- SECTION CORNER
- ADJACENT PROPERTY LINE
- ROAD CENTER LINE

ER, SECTION 8
TH, RANGE 5 EAST
AND MERIDIAN
IR MARKER)

No.	REVISION

Skylin
A/E/S, IN
Architecture | Engineering | Surve
93 W. Golf Course Rd. #101 | Logan, U
(435) 752-8601 | Fax (435) 752-85

Professional Seal:

PROFESSIONAL LA
JAYNE
8534
14 JUN
SU
STATE

Project Title:
SUNRISE VILLAGE
UNITS 50,51,52
RICH COUNTY, UT

Sheet title:
PRELIMINARY
BOUNDARY SURVE

Drawn By:	Project Number:	Shee
LSMITH	08-072	
Designed By:	Date:	
	19 MAY 2008	
Reviewed By:	Sheet Scale:	
	1" = 100'	2
CJOB-072		

EXHIBIT A

EXHIBIT B

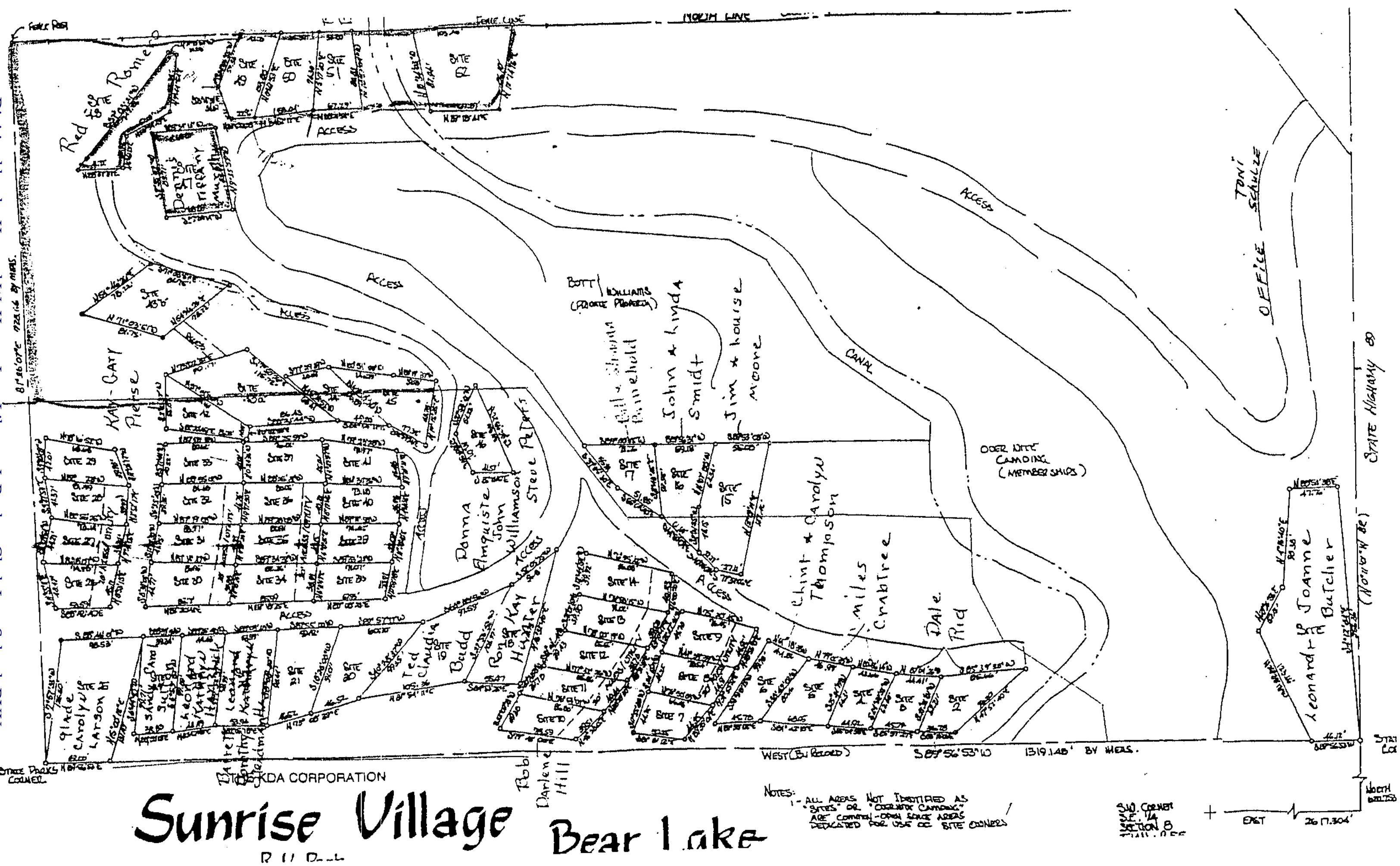
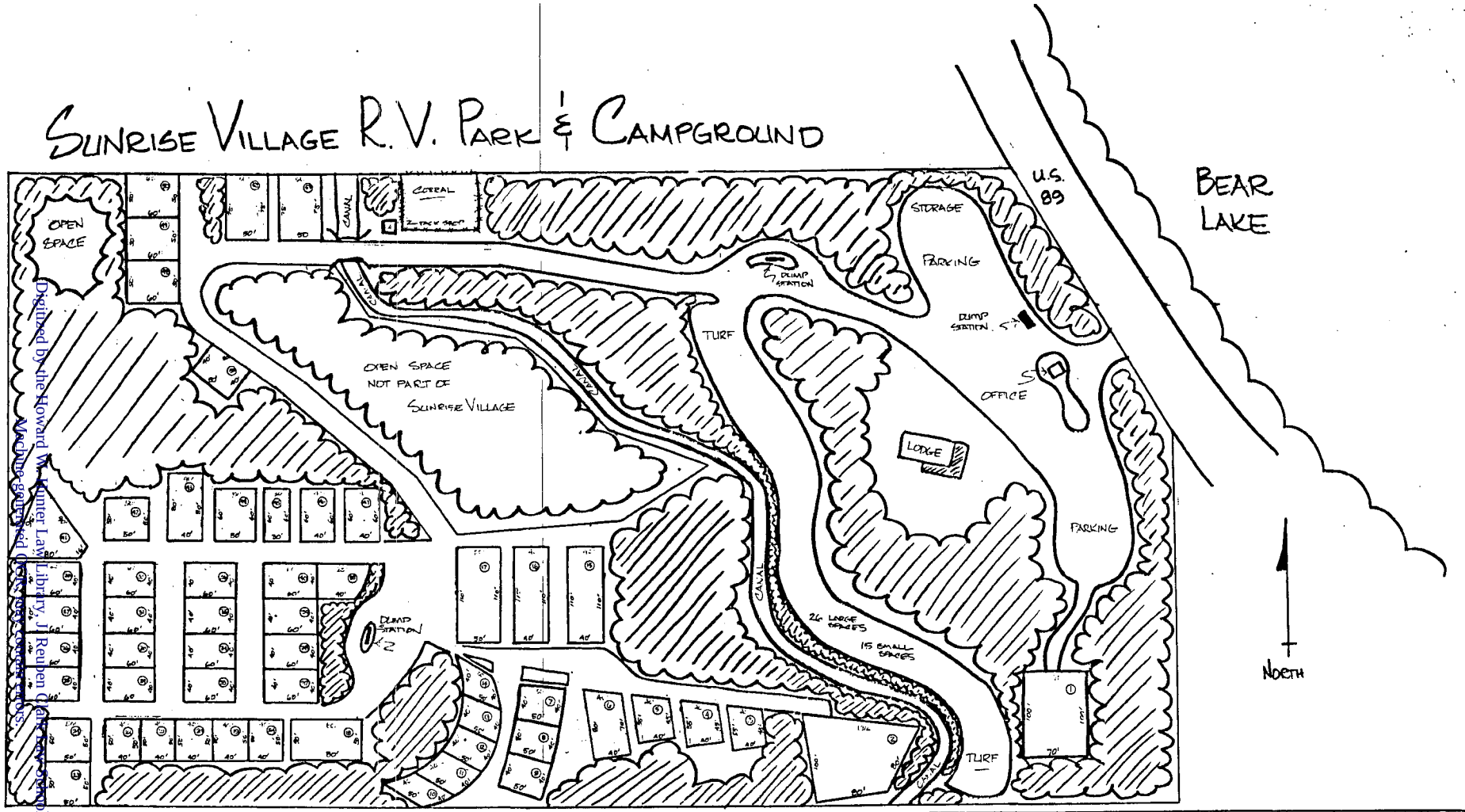


EXHIBIT B

EXHIBIT C

SUNRISE VILLAGE R.V. PARK & CAMPGROUND



SUNRISE VILLAGE R.V. PARK & CAMPGROUND MEMBERSHIP #1 (PUBLIC) EAST OF CANAL, LESS LOT 1 SUBJECT TO RIGHTS OF WAY

SUNRISE VILLAGE R.V. PARK & CAMPGROUND MEMBERSHIP #2 (PRIVATE) WEST OF CANAL, PLUS LOT 1 LESS BOTT/WILLIAMS PROPERTY TOGETHER WITH RIGHTS OF WAY

NOTES:
1) PARKING SPACES FOR R.V.'S SHALL BE GRASS
2) ROADWAYS SHALL BE ALL-WEATHER GRAVEL
3) NATURAL GROWTH AREAS OF TREES & BRUSH SHALL BE ADDED TO. TO ENHANCE SCREENING, SHADE, & DESIGN FUNCTION

LEGAL: NORTH HALF OF LOT 4 SECTION 8, 14 NORTH, 5EAST LESS: M/B/D BOTT/WILLIAMS

SITE PLAN APPROVAL
by: RICH COUNTY
PLANNING & ZONING
MARCH 28, 1986
PERPETUAL
MEMBERSHIP

SUNRISE VILLAGE R.V.
PARK & CAMPGROUND
K.D.A. CORP. LOGAN, UTAH
SCALE 1" = 50 FEET
NORTHERN MANAGEMENT GROUP

EXHIBIT C

EXHIBIT D

EXHIBIT D

Recorded JULY 8 A.D. 1997 Filing No. 00598
At 1:20 PM In Book R7 Page 459
Fee 19.00 Debra L. Ames, Rich County Recorder THE K.D.A. CORPORATION
Requested By Harold McGrath

SUNRISE VILLAGE R.V. PARK
II
BEAR LAKE

"THIS IS A LEGALLY BINDING CONTRACT, IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE."

LEASE

The K.D.A. CORPORATION of Logan, Utah, County of Cache, State of Utah, hereinafter referred to as the Lessor, hereby leases to JOHN C. ROMERO AND BARBARA Y. ROMERO; HAROLD MCGRATH AND JANICE MCGRATH; NORMAN BATT AND DEBRALEE BATT, State of UTAH hereinafter referred to as the Lessee on that certain site located on SUNRISE VILLAGE R.V. PARK, SITE NUMBER 48 and more particularly described as follows, to wit:

See attached for the legal description which by this reference is made a part hereof.

This lease is for a period of 50 years from September 1, 1996 thru September 1, 2046.

Lessee will recognize other Lessees rights and agrees not to do anything to adversely affect them.

Said Lease is also subject to the following: 1) Articles of incorporation of SUNRISE VILLAGE MEMBERS ASSOCIATION, INC. 2) By-Laws SUNRISE VILLAGE MEMBERS ASSOCIATION, INC. 3) Regulations of SUNRISE VILLAGE RECREATIONAL VILLAGE PARK 4) All other regulations that may come forth by virtue of the powers stipulated in the above mentioned documents 5) Lease Agreement.

Site to be cut in as owners needs require, water and power to be installed by developers.

Grantee: JOHN C. ROMERO AND BARBARA Y. ROMERO
8713 Oakwood Park Circle, Sandy, UT 84094
HAROLD MCGRATH AND JANICE MCGRATH
5075 South Cloveview Drive, Murray, UT 84123
NORMAN BATT AND DEBRALEE BATT
6157 South 4390 West, Salt Lake City, UT 84118

Dated: September 1, 1996

K.D.A. CORPORATION
BY: Alison H. Bodily
ALISON H. BODILY, PRESIDENT

State of Utah }
County of Cache } ss.

On the 4 day of September, 1996, personally appeared before me ALISON H. BODILY who being duly sworn did say, that he, the said ALISON H. BODILY is the PRESIDENT of K.D.A. CORPORATION, and that the within the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said ALISON H. BODILY duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Notary Public

PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST OF THE SALT LAKE BASE AND MERIDIAN, ALSO BEING LOCATED IN THE NORTH ONE-HALF OF LOT 4, SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST.

TOGETHER WITH RIGHT OF USE OF COMMON AREAS AND RIGHT OF WAY FOR ACCESS AND UTILITIES OVER A 30 FOOT WIDE ROAD WAY FROM THE STATE ROAD TO THE SITE.

SAID SITE BEING FURTHER DESCRIBED AS FOLLOWS (REVISED):

BEGINNING AT A POINT THAT IS NORTH 597.235 FEET AND WEST 1232.197 FEET FROM THE NORTHEAST CORNER OF THE UTAH STATE PARKS AND RECREATIONS PROPERTY AS RECORDED IN THE RICH COUNTY RECORDER'S OFFICE ON 6/4/71 IN BOOK F-2, PAGE 702, SAID POINT BEING NORTH 620.53 FEET AND EAST 2617.304 FEET FROM THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 8 (BY RECORD) AND RUNNING THENCE NORTH 6*43'01" EAST 32.92 FEET; THENCE NORTH 58*54'49" EAST 52.08 FEET; THENCE NORTH 9*44'54" EAST 55.34 FEET; THENCE NORTH 74*18'54" WEST 10.88 FEET; THENCE SOUTH 75*19'18" WEST 92.75 FEET; THENCE SOUTH 0*22'42" EAST 94.50 FEET; THENCE NORTH 88*37'36" EAST 41.72 FEET TO THE POINT OF BEGINNING.

EXHIBIT D

Dated MAR 19 2001 Filing No. 66907
2:30 PM/PM In Book 89 Page 105
12.00 Debra L. Ames Rich County Recorder
Requested by Brent Rhees

THE K.D.A. CORPORATION

SUNRISE VILLAGE II R.V. PARK

BEAR LAKE

"THIS IS A LEGALLY BINDING CONTRACT, IF NOT UNDERSTOOD, SEEK COMPETENT ADVICE."

LEASE

The K.D.A. CORPORATION of Logan, Utah, County of Cache, State of Utah, hereinafter referred to as the Lessor, hereby leases to BRENT RHEES AND GINGER RHEES, State of Utah hereinafter referred to as the Lessee on that certain site located on SUNRISE VILLAGE II R.V. PARK SITE NUMBER 51 and more particularly described as follows, to wit:

See attached for the legal description which by this reference is made a part hereof.

This lease is for a period of 50 years from December 5, 2000 to December 5, 2050.

Lessee will recognize other Lessees rights and agrees not to do anything to adversely affect them.

Said Lease is also subject to the following: 1) Articles of incorporation of SUNRISE VILLAGE MEMBERS ASSOCIATION, INC. 2) By-Laws SUNRISE VILLAGE MEMBERS ASSOCIATION, INC. 3) Regulations of SUNRISE VILLAGE RECREATIONAL VILLAGE PARK 4) All other regulations that may come forth by virtue of the powers stipulated in the above mentioned documents 5) Lease Agreement.

Site to be cut in as owners needs require, water and power to be installed by developers.

Grantee: BRENT RHEES AND GINGER RHEES
Address: 3772 NORTH 3900 WEST PLAIN CITY, UT 84404

THIS DOCUMENT HAS BEEN PREPARED BY NORTHERN TITLE COMPANY AS AN ACCOMMODATION ONLY. WITHOUT ANY EXAMINATION WITH REGARD TO TITLE OR ITS LEGAL EFFECT.

Dated: December 5, 2000

K.D.A. CORPORATION

BY: Alison H. Bodily
ALISON H. BODILY, PRESIDENT

State of Utah)
County of Cache) ss.

On the 5th day of December, 2000, personally appeared before me ALISON H. BODILY who being duly sworn did say, that he, the said ALISON H. BODILY is the PRESIDENT of K.D.A. CORPORATION, and that the within the foregoing instrument was signed in behalf of said corporation by authority of a resolution of its board of directors and said ALISON H. BODILY duly acknowledged to me that said corporation executed the same and that the seal affixed is the seal of said corporation.

Dacei Hoggan
Notary Public

Notary Public
DACEI HOGGAN
84 East Center
Logan, Utah 84321
My Commission Expires
February 4, 2002
State of Utah

LEGAL DESCRIPTION

PART OF THE SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST OF THE SALT LAKE BASE AND MERIDIAN, ALSO BEING LOCATED IN THE NORTH ONE-HALF OF LOT 4, SOUTHEAST QUARTER OF SECTION 8, TOWNSHIP 14 NORTH, RANGE 5 EAST.

TOGETHER WITH RIGHT OF USE OF COMMON AREAS AND RIGHT OF WAY FOR ACCESS AND UTILITIES OVER A 30 FOOT WIDE ROAD WAY FROM THE STATE ROAD TO THE SITE.

SAID SITE 51 BEING FURTHER DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT THAT IS NORTH 654.915 FEET AND WEST 972.207 FEET FROM THE NORTHEAST CORNER OF THE UTAH STATE PARKS AND RECREATIONS PROPERTY AS RECORDED IN THE RICH COUNTY RECORDER'S OFFICE ON 6/4/71 IN BOOK F-2, PAGE 702, SAID POINT BEING NORTH 620.53 FEET AND EAST 2617.304 FEET FROM THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 8 (BY RECORD) AND RUNNING THENCE NORTH 18°57'04" WEST 80.83 FEET; THENCE SOUTH 89°18'06" WEST 33.80 FEET; THENCE SOUTH 5°17'30" WEST 78.30 FEET; THENCE NORTH 88°21'54" EAST 67.29 FEET TO THE POINT OF BEGINNING.

Tab 3

ADDENDUM NO. 3

Andersen Defendants' Leasehold Interests

(*See also* R. at 3259-3381, 4367-4369)

Lot #	Name	Original Date of Purchase	Purchase Documents	Exhibit #
2	Dale & Marta Ridd	7/26/97	Lease, Right of Way Grant Deed, Purchase Contract	2
3	Marcel & Sandra Schwager	5/29/00	Lease, Right of Way Grant Deed, Purchase Contract	3
4	Nictree Ltd. Partnership (Miles & Sherry Crabtree)	9/28/96	Lease, Right of Way Grant Deed, Purchase Contract	4
6	Clint & Carolyn Thompson	7/23/96	Lease, Right of Way	5
11	Lynn Andersen	9/1/00	Lease, Right of Way Grant Deed	6
16	Smidt Revocable Trust (John & Linda Smidt as Trustees)	7/6/91	Lease, Right of Way Grant Deed, Earnest Money Sales Agreement, Recorded Notice of Lease	7
17	Bill & Shauna Brienholt (Successor in interest to John Williamson)	2/6/95	Lease, Assignment of Lease and Right of Way Grant Deed	8

Lot #	Name	Original Date of Purchase	Purchase Documents	Exhibit #
18	Ronald Hunter	8/19/96	Lease, Right of Way Grant Deed, Purchase Contract	8.1
24	Greg Larson (Successor in interest to Sanders & Laura Sutton)	7/1/98	Lease, Right of Way Grant Deed	9
43ab	Harold Kay	Oct. 1989 (verbal)	Lease, Right of Way Grant Deed dated October 1, 2001	9.1
45	Donna Elmquist	8/29/94	Lease, Right of Way Grant Deed	10
46	Donna Elmquist	8/14/94	Lease, Right of Way Grant Deed, Purchase Contract, and Purchase Contract and Addendum	11

Tab 4

ADDENDUM NO. 4

Andersen Defendants' Undivided Leasehold Interests

(*See also* R. at 3383-3415, 3419-3443, and 4367-4369)

Lot #	Name	Original Date of Purchase	Purchase Documents	Exhibit #
10	Larry A. Andersen	6/11/98	Purchase Contract, Lease, Right of Way Grant Deed (11-21-03)	12
20	Timothy Kendall & Scott Hayes (Successors in interest to Terry Behunin)	7/3/99	Quit Claim Deed &Transfer of Interest, Purchase Contract, Lease, Right of Way Grant Deed	13
21	Kathryn & Leonard Hanzlick	10/1/97	Purchase Contract, Lease, Right of Way Grant Deed	14
22	Dorothy Steadman	10/1/97	Purchase Contract, Lease, Right of Way Grant Deed	15
25	Glade Larsen & Richard Roberts	8/25/97	Purchase Contract, Lease, Right of Way Grant Deed	16
44	William & Laurie Glaser	7/25/99	Purchase Contract, Lease, Right of Way Grant Deed, and Affidavit	17

Tab 5

ADDENDUM NO. 5

Recorded Leasehold Interests Existing
Prior To Any Pioneer Trust Deed
(*See also* R. at 3443-3489, 4369)

Lot #	Name	Original Purchase Date	Purchase Documents	Recorded	Exhibit #
1	Joyce Nelson (Successor in interest to Leonard & Joanne Butcher)	1/9/89	Lease, Right of Way Grant Deed	3/27/89	18
5	Miles & Sherry Crabtree	7/23/94	Lease, Right of Way Grant Deed, Purchase Contract	10/27/94	19
7	Ken & Kay Depew	9/1/00	Lease	9/22/00	20
15	Jim & Louise Moore	8/3/87	Trust Deed, Perpetual Right of Way Grant Deed	8/25/87	21
19	Claudia Budd	9/29/96	Lease, Purchase Contract	10/2/00	22
42	Gary & Kaye Pearce	6/24/97	Lease, Purchase Contract, Right of Way Grant Deed	9/26/00	23
48	Harold & Jan McGrath	9/1/96	Lease, Purchase Contract	7/3/97	24

Tab 6

ADDENDUM NO. 6

Property Improvements Made By Andersen Defendants

See also Affidavits attached to Anderson Defendants' Summary Judgment Reply Memorandum

(R. at 3517-3581.)

Lot #	Name	Improvements	Date Made	Exhibit # & Record Citation
2	Dale Ridd	Individual power meter unit installed –	1997	Ex. 29, R. at 3516 - 3519
		Enlarged parking –	Aug. & Sept. 1998	
		Altered entrance to pad –	Sept. 1998	
		Maintained lot & cleared weeds –	Since 1997	
3	Marcel Schwager	10' x 20' cement pad –	Prior to May 29, 2000	Ex. 30, R. at 3520 - 3523
		Chipped rock driveway –	Prior to May 29, 2000	
		Grass –	Prior to May 29, 2000	
		Underground sprinkler system –	Prior to May 29, 2000	
		Separate pedestal electric meter (for water, sewer & electricity) –	Prior to May 29, 2000	
		Ornamental rocks –	Prior to May 29, 2000	
		Maintained lot & cleared weeds –	Since 2000	
4	Miles Crabtree (Nictree Ltd. Partnership)	Electrical utilities –	May 1999	Ex. 31, R. at 3524 - 3527
		Concrete pad 30' x 15' –	June 8, 1998	
		Sprinkling system –	May 1999	
		Grass, tree and plant landscaping –	May 24, 1999	
		Driveway & entrance with gravel –	June 1998	
		Maintained lot & cleared weeds –	Since Sept. 1996	
6	Clint Thompson	Cement trailer pad and patio –	Aug. 1996	Ex. 32, R. at 3528 - 3532
		Grass & sprinkler system –	Aug. 1996	
		Landscaping & gravel for driveway –	Sept. & Oct. 1996	
		Additional sprinkler system –	June 1997	
		Planted shrubs & flowers –	June 1997	
		Constructed a brick and rock barbeque –	July 1997	
		Installed a lattice fence –	July 1997	
		Additional permanent landscaping –	Summer of 1998	
		Planted pine trees, shrubs and grass –	1999	
		Additional gravel to driveway –	2000	
		Additional rocks for landscaping –	2000	
		Additional sprinklers to system –	Before Aug. 2001	
		Maintained lot & cleared weeds –	Since 1996	

Lot #	Name	Improvement	Date Made	Exhibit # & Record Citation
10	Larry Andersen	40' x 40' lawn –	1998	Ex. 33, R. at 3533 - 3536
		Power & sewer outlets –	Since 1999	
		Sprinkler heads & garden hoses –	1999	
		Maintained lot & cleared weeds –	Since 1998	
11	Larry Andersen for Lynn Andersen	New electrical line & meter –	June 2000	Ex. 34, R. at 3537 - 3540
		Planted new grass & flowers –	July 2000	
		Maintained lot & cleared weeds –	Since 1999	
16	John Smidt as Trustee	Individual power meter unit –	1991	Ex. 35, R. at 3541 - 3544
		Electrical services –	1991	
		Concrete pad –	1994	
		Maintained lot & cleared weeds –	Since 1991	
17	Bill Breinholt	Planted lawn –	1990	Ex. 36, R. at 3545 - 3548
		Paved & installed 40' x 20' cement pad –	1992	
		Maintained lot & cleared weeds –	1995	
18	Ronald Hunter	Enlarge useable space (fill dirt) –	Aug. 1996	Ex. 36.1, R. at 3549 - 3553
		40' x 16' cement pad paved & installed –	May 1997	
		Sprinkler system & planted grass –	May 1997	
		Installed cement for a camper pad & fence –	May 1997	
		Installed permanent steps for fifth wheel –	May 1997	
		Installed trees, shrubs & flowers –	Since May 1997	
		Installed power pole, & gravel driveway –	June 1997	
		Installed 10' x 14' shed –	June 1997	
		Installed family name sign –	Sept. 1997	
		Installed a permanent fence around trees –	Sept. 1997	
		Installed metal roof over fifth wheel –	April 1998	
		Installed patio cover –	April 1998	
		Electrical power –	Never shut off	
		Installed railroad ties (landscaping) –	June 2000	
		Installed cement extension pad (fifth wheel) –	June 2000	
		Fifth wheel parked and never moved –	Since 1996	
		Maintained lot & cleared weeds –	Since 1996	
		Cleared area/installed gravel base for 2nd trailer –	May 2000	
		Hauled in fill dirt & planted grass for 2nd trailer –	May 2000	
		Power & sewer installed for 2nd trailer –	May 2000	
		Cleared area & installed gravel base for 3rd trailer –	May 2000	
		Hauled in fill dirt & planted grass for 3rd trailer –	May 2000	
		Power & sewer installed for 3rd trailer –	May 2000	

Lot #	Name	Improvements	Date Made	Exhibit # & Record Citation
20	Terry Behunin	15' x 30' concrete pad with retaining blocks – Installed gravel driveway – Topsoil – Installed automatic sprinklers – Installed more retaining blocks – Planted sod and trees – Installed permanent steps – Sprayed top of hill to prevent dust – Maintained lot & cleared weeds –	Aug. 28, 1998 Sept. 30, 1998 Oct. 1999 May 2000 May 2000 May 2000 May 2000 July 2000 Since 1998	Ex. 37, R. at 3554 - 3557
21	Leonard Hanzlick	Installed 8' x 40' cement pad – Installed gravel driveway – Installed permanent steps – Installed humming bird feeders – Installed rocks and railroad ties – Landscaping – Planted lawn and Flowers – Treated hillside to prevent dust – Installed clothesline – Yard Maintenance – Maintained lot & cleared weeds –	Aug. & Sept. 1998 Aug. & Sept. 1998 Aug. 1998 Summer 1998 & 1999 Summer 1998 & 1999 Summer 1998 & 1999 Summer 1998 & 1999 Summer 1998, 1999 & 2000 July 1998 Since 1998 Since 1998	Ex. 38, R. at 3558 - 3561
22	Dorothy Steadman	Installed 16' x 64' cement pad – Driveway blacktopped – Installed sprinkler system – Planted lawn – Installed electrical pedestals – Place railroad ties – Maintained lot & cleared weeds –	May 1998 Aug. 2000 1998 Prior to Aug. 2001 Prior to Aug. 2001 Prior to Aug. 2001 Since 1998	Ex. 39, R. at 3562 - 3565
24	Greg Larson	Leveled & timbered hill with 4' railroad ties – Installed flower bed with railroad ties – Installed automatic sprinkler system – 35' x 15' concrete pad – Gravel for driveway – Maintained lot & cleared weeds –	Prior to Aug. 2001 Prior to Aug. 2001 Prior to Aug. 2001 Prior to Aug. 2001 Prior to Aug. 2001 Since 1998	Ex. 40, R. at 3566 - 3569
25	Glade Larson	Leveled lot/site – Installed power, water & sewer hookups – Poured concrete for fifth wheel – Installed sprinkler system & concrete patios – Poured more concrete & planted lawn – Planted shrubs – Installed rock fire pit & storage shed – Maintained lot & cleared weeds –	1997 1997 1997 1998 1999 2000 2000 Since 1996	Ex. 41, R. at 3570 - 3573

Lot #	Name	Improvements	Date Made	Exhibit # & Record Citation
44	William Glaser	Installed rock & cinder ground cover –	Prior to Aug. 2001	Ex. 42, R. at 3574 - 3577
		Installed concrete slab –	Prior to Aug. 2001	
		Fill dirt & railroad tie retaining wall –	Prior to Aug. 2001	
		Planted trees & flowers –	Prior to Aug. 2001	
		Installed power meter –	Prior to Aug. 2001	
		RV on site continuously –	Since May 2000	
		Maintained & cleared weeds –	Since 1999	
45 & 46	Donna Elmquist-Shillcutt	Installed 40' x 12' cement pad –	1994	Ex. 43, R. at 3578 - 3581
		Installed electrical & sewer hookups –	1994	
		Leveled ground –	May – Sept. 1995	
		Landscaping –	May – Sept. 1995	
		Sprinkler system –	May – Sept. 1995	
		Planted 12 trees, grass & flowers –	May – Sept. 1995	
		Lined driveway (rocks & flower beds) –	May – Sept. 1995	
		4 whiskey barrels (dirt & flowers) –	May – Sept. 1997	
		Installed wooden fence –	1999	
		20' x 10' cement pad for shed –	1999	
		Built/installed wooden shed with shingle roof –	1999	
		Installed electric wire –	1999	
		Installed railroad ties –	1999	
		Laid gravel –	1999	
		Dug fire pit & install rocks around it –	1999	
		Planted 3 additional trees & flowers –	2000	
		Trailer parked year-round –	Since 1998	
		Maintained lot & cleared weeds –	Since 1994	

Tab 7

ADDENDUM NO. 7

Andersen Defendants' Recorded Interests

Lot #	Name	Purchase Date	Documents	Document Date	Recording Information			
					Date	Filing No.	Book	Page(s)
2	Dale & Marta Ridd [Kenneth & Kay Depew (Successor in interest to Dale & Martha Ridd) Lance Kelson (Successor in interest to Kenneth & Kay Depew)]	7/26/1997	Lease (11/1/1998 to 11/1/2048)	11/1/1998	01/29/03	60619	P9	42-43
			Right of Way Grant Deed (11/1/1998 to 11/1/2048)	11/1/1998	1/29/03	60620	P9	44-45
			Lease (11/1/2048 to 11/1/2098)	11/1/1998	1/29/03	60621	P9	46-47
			Right of Way Grant Deed (11/1/2048 to 11/1/2098)	11/1/1998	1/29/03	60622	P9	48-49
3	Marcel J. & Sandra S. Schwager	5/29/2000	Lease (7/1/2000 to 7/1/2050)	7/1/2000	7/11/02	59440	I9	312-313
			Lease (7/1/2050 to 7/1/2100)	7/1/2000	7/11/02	59441	I9	314-315
			Right of Way Grant Deed (7/1/2050 to 7/1/2100)	7/1/2000	7/11/02	59442	I9	316-317
			Right of Way Grant Deed (7/1/2000 to 7/1/2050)	7/1/2000	7/11/02	59443	I9	318-319
4	Nictree Limited Partnership (Miles & Sherry Crabtree)	9/28/1996	Lease (7/1/1998 to 7/1/2048)	7/1/1998				
			Lease (7/1/2048 to 7/1/2098)	7/1/1998				
			Right of Way Grant Deed (11/1/1998 to 11/1/2048)	7/1/1998				
			Right of Way Grant Deed (11/1/2048 to 11/1/2098)	7/1/1998				

Lot #	Name	Purchase Date	Documents	Document Date	Recording Information			
					Date	Filing No.	Book	Page(s)
6	Clint & Carolyn Thompson, Dave Warnick, Dewey Garner, & Jason Thompson	7/23/1996	Lease (7/23/1996 to 7/23/2046)	8/5/1996	7/3/03	61680	S9	775-776
			Lease (7/23/2046 to 7/23/2096)	8/5/1996	7/3/03	61681	S9	777-778
			Right of Way Grant Deed (7/23/1996 to 7/23/2046)	8/5/1996	7/3/03	61682	S9	779-780
			Right of Way Grant Deed (7/23/2046 to 7/23/2096)	8/5/1996	7/3/03	61683	S9	781-782
10	Larry Andersen	6/11/1998	Lease (11/21/2003 to 11/21/2053)	11/21/2003	11/28/03	62628	V9	780-781
			Right of Way Grant Deed (11/21/2003 to 11/21/2053)	11/21/2003	11/28/03	62629	V9	782-783
			Lease (11/21/2053 to 11/21/2103)	11/21/2003	11/28/03	62630	V9	784-785
			Right of Way Grant Deed (11/21/2053 to 11/21/2103)	11/21/2003	11/28/03	62631	V9	786-787
11	Lynn Andersen (Larry Andersen's interest assigned to Lynn)	8/8/1999 6/16/2000	Lease (9/1/2000 to 9/1/2050)	9/1/2000	8/9/02	59641	J9	349-350
			Right of Way Grant Deed (9/1/2000 to 9/1/2050)	9/1/2000	8/9/02	59642	J9	351-352
			Lease (9/1/2050 to 9/1/2100)	9/1/2000				
			Right of Way Grant Deed (9/1/2050 to 9/1/2100)	9/1/2000				
16	Smidt Revocable Trust (John & Linda Smidt as Trustees	7/6/1991	Lease (6/1/2001 to 6/1/2051)	6/1/2001	6/5/01	57492	X8	69-70
			Lease (6/1/2051 to 6/1/2101)	6/1/2001	6/5/01	57493	X8	71-72
			Right of Way Grant Deed (6/1/2001 to 6/1/2051)	6/1/2001	6/12/01	57538	X8	267-268
			Right of Way Grant Deed (6/1/2051 to 6/1/2101)	6/1/2001	6/22/01	57584	X8	435-436

Lot #	Name	Purchase Date	Documents	Document Date	Recording Information			
					Date	Filing No.	Book	Page(s)
17	John Williamson	2/6/1995	Lease (2/6/1995 to 2/6/2045)	2/6/1995	6/23/03	61510	S9	238-239
			Right of Way Grant Deed (2/6/1995 to 2/6/2045)					
			Lease (2/6/2045 to 2/6/2095)					
			Right of Way Grant Deed (2/6/2045 to 2/6/2095)					
	Bill & Shauna Breinholt (Successor in interest to John William-son)	12/6/1996	Assignment of Lease and Right of Way Grant Deed)	12/9/1996	6/18/03	61436	S9	1-2
	Tracy Breinholt (Successor in interest to Bill & Shauna Breinholt)	9/22/2010	Assignment of Lease	9/22/2010	10/18/10	80538	A11	1596-1597
18	Ronald & Kay Hunter (60%), Michael & Trudi Budd (10%), Robert & Sheri Gonzales (10%), & Randal Hunter (10%) (now deceased)	8/19/1996	Lease (8/19/1996 to 8/19/2046)	8/19/1996	5/10/01	57366	W8	200-202
			Lease (8/19/2046 to 8/19/2096)	8/19/1996				
			Right of Way Grant Deed (8/19/1996 to 8/19/2046)	8/19/1996				
			Right of Way Grant Deed (8/19/2046 to 8/19/2096)	8/19/1996				
			Notice of Interest (Daniel J. Hunter)	5/17/2001	5/18/01	57408	W8	325-326
			Notice of Interest (Ronald & Kay Hunter)	9/10/2003	9/12/03	62136	U9	193-198
			Notice of Interest (Robert & Sheri Gonzales and Michael S. & Trudi Budd)	9/9/2003	9/12/03	62137	U9	199-204

Lot #	Name	Purchase Date	Documents	Document Date	Recording Information			
					Date	Filing No.	Book	Page(s)
20	Terry & Melanie Behunin	7/3/1999	Lease (6/10/2003 to 6/10/2053)	6/10/2003	6/18/03	61445	S9	33-34
			Right of Way Grant Deed (6/10/2003 to 6/10/2053)	6/10/2003				
			Lease (6/10/2053 to 6/10/2103)	6/10/2003				
			Right of Way Grant Deed (6/10/2053 to 6/10/2103)	6/10/2003	6/18/03	61444	S9	31-32
	Timothy Kendall & Scott Hayes (Successors in interest to Terry Behunin)	10/20/2005	Quit Claim Deed and Transfer of Interest	10/20/2005	10/28/05	67040	C10	1139-1140
21	Leonard M. & Kathryn J. Hanzlick	10/1/1997	Lease (6/10/2003 to 6/10/2053)	6/10/2003	6/20/03	61483	S9	173-174
			Lease (6/10/2053 to 6/10/2103)	6/10/2003	6/20/03	61481	S9	169-170
			Right of Way Grant Deed (6/10/2003 to 6/10/2053)	6/10/2003	6/20/03	61482	S9	171-172
			Right of Way Grant Deed (6/10/2053 to 6/10/2103)	6/10/2003	6/20/03	61484	S9	175-176
22	Barrett (now deceased) & Dorothy Steadman	10/1/1997	Lease (6/10/2003 to 6/10/2053)	6/10/2003	6/20/03	61477	S9	161-162
			Right of Way Grant Deed (6/10/2003 to 6/10/2053)	6/10/2003	6/20/03	61478	S9	163-164
			Lease (6/10/2053 to 6/10/2103)	6/10/2003	6/20/03	61479	S9	165-166
			Right of Way Grant Deed (6/10/2053 to 6/10/2103)	6/10/2003	6/20/03	61480	S9	167-168
	Dorothy Steadman (transfer of Barrett's interest)		Personal Representative's Quit Claim Deed and Transfer of Interest	9/27/2005	10/6/05	66816	C10	508-510

Lot #	Name	Purchase Date	Documents	Document Date	Recording Information			
					Date	Filing No.	Book	Page(s)
24	Greg Larson (see note on site no. 25)	9/17/1996	no Lease or Right of Way Grant Deed given					
	Sanders A. & Laura M. Sutton (purchase from KDA) [Greg Larson (Sept. 2001, Successor in interest to Sanders & Laura Sutton)]	7/1/1998	Lease (7/1/1998 to 7/1/2048)	7/1/1998				
			Right of Way Grant Deed (7/1/1998 to 7/1/2048)	7/1/1998				
			Lease (7/1/2048 to 7/1/2098)					
			Right of Way Grant Deed (7/1/2048 to 7/1/2098)					
25	Glade Larsen (50%) & Richard Roberts (50%) (originally had site no. 22, purchased on 9/17/1996 (no lease); traded on 8/25/1997)	8/25/1997	Lease (3/12/2003 to 3/12/2053)	3/12/2003	3/20/03	60914	Q9	123-124
			Right of Way Grant Deed (3/12/2003 to 3/12/2053)	3/12/2003	3/20/03	60915	Q9	125-126
			Lease (3/12/2053 to 3/12/2103)	3/12/2003	3/20/03	60916	Q9	127-128
			Right of Way Grant Deed (3/12/2053 to 3/12/2103)	3/12/2003	3/20/03	60917	Q9	129-130
43 a	Harold Kay	Oct. 1989 (verbal)	Lease (10/1/2001 to 10/1/2051)	10/1/2001	10/4/02	59988	L9	156-157
			Right of Way Grant Deed (10/1/2001 to 10/1/2051)	10/1/2001	10/4/02	59989	L9	158-159
			Lease (10/1/2051 to 10/1/2101)	10/1/2001	10/4/02	59990	L9	160-161
			Right of Way Grant Deed (10/1/2051 to 10/1/2101)	10/1/2001	10/4/02	59991	L9	162-163
43 b	Harold Kay	Oct. 1989 (verbal)	see site no. 43a information listed above					

Lot #	Name	Purchase Date	Documents	Document Date	Recording Information			
					Date	Filing No.	Book	Page(s)
44	William & Laurie Glaser	7/25/1999	Affidavit	8/15/2002	8/19/02	59666	J9	418-420
			Lease (8/14/2002 to 8/14/2052)	8/14/2002	8/19/02	59667	J9	421-422
			Lease (8/14/2052 to 8/14/2102)	8/14/2002	8/19/02	59668	J9	423-424
			Right of Way Grant Deed (8/14/2002 to 8/14/2052)	8/14/2002	8/19/02	59669	J9	425-426
			Right of Way Grant Deed (8/14/2052 to 8/14/2102)	8/14/2002	8/19/02	59670	J9	427-428
45 & 46	Donna Elmquist [Patsy & Robert McMichael (10/2/2008, Successor in interest to Donna Elmquist)]	8/29/1994	Lease (8/29/1994 to 8/29/2044)	8/29/1994	7/12/02	59465	I9	372-373
			Lease (8/29/2044 to 8/29/2094)	8/29/1994	7/12/02	59466	I9	374-375
			Right of Way Grant Deed (8/29/1994 to 8/29/2044)	8/29/1994	7/12/02	59467	I9	376-377
			Right of Way Grant Deed (8/29/2044 to 8/29/2094)	8/29/1994	7/12/02	59468	I9	378-380
	KDA/ Sunrise Village Members' Association Inc.		Articles of Incorporation		2/19/88	36435	O5	289-291
			By-Laws		2/19/88	36435	O5	285-288
			Regulations		2/19/88	36435	O5	281-284
			Declaration of Membership Plat		2/19/88	36435	O5	295-296
			Declaration of Plat/Plan Approved			36436		